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TRANSCRIPT OF RECORD.

PROCEEDINGS in the District Court of the United States for the Western District of Kentucky, at a regular term begun and held at the Federal Court Hall, in the City of Louisville, Kentucky, on Monday, October 8, 1934, A. D.

Present: Hon. Chas. I. Dawson, Judge.

Thomas Henry Robinson, Jr., - - - - Plaintiff,

v.

United States of America, - - - - Defendant.

BE IT REMEMBERED, That heretofore, to-wit, on the 20th day of October, 1934, the Grand Jury of the United States of America for the Western District of Kentucky, returned an indictment which was filed with the clerk, and is in words and figures as follows, to-wit:

No. 18917.

United States District Court
Western District of Kentucky
Louisville Division

The United States of America

vs.

Thomas Henry Robinson, Jr.
Mrs. Frances Robinson,
Thomas Henry Robinson, Sr.

Indictment
Conspiracy, Lindbergh Act

Indictment

A true bill,
 Wm. H. Tarvin
 Foreman
 Filed in open court this 20 day
 of October, A. D. 1934
 Lilburn Phelps, Clerk
 H. M. Kresin, D. C.
 Bail, \$ No bail as to Thomas
 Henry Robinson, Jr.,
 Lilburn Phelps,
 Clerk

United States of America

Set

Western District of Kentucky

In the District Court of the United States for the Sixth Judicial Circuit and Western District of Kentucky, held at Louisville, October Term, in the year of our Lord, 1934.

FIRST COUNT:

The Grand Jurors of the United States of America, impaneled and sworn, and charged to inquire in and for the said Western District of Kentucky, upon their oaths present:

That heretofore, to-wit, on or about and between the first day of September, in the year of our Lord, 1934 and the tenth day of October, in the year of our Lord, 1934, the exact date being to the Grand Jurors aforesaid unknown, and continuing to exist up to and including the 16th day of October, in the year of our Lord, 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district, unlawfully did then and there enter into an agreement, confederation and conspiracy to violate the provisions of Sections 408-a and 408-b of Title 18, of the United States Code Annotated, that is to say, enter into an agreement, confederation and conspiracy to seize, kidnap and carry away and to hold for ransom or reward and to trans-

Indictment

port and cause to be transported and aid and abet each other in transporting in interstate commerce a person who had been unlawfully seized and kidnaped, to-wit, Mrs. Alice Stoll, who was not a minor and not carried away or held by her parents, and carry her away by means of an automobile, and hold her for ransom or reward, and that said parties did do certain overt acts toward carrying out such unlawful agreement, confederation and conspiracy, to-wit:

The said Thomas Henry Robinson, Jr., on the 10th day of October, 1934, did enter the home of the said Mrs. Alice Stoll who was not a minor and was not seized and carried away by her parents, and did seize and carry her away against her will and consent, and did transport her in interstate commerce from Louisville, in the State of Kentucky, to Indianapolis, in the State of Indiana, and did demand as a ransom or reward for her release, the sum of \$50,000.00.

And the said Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did, on or about and after the 10th day of October, 1934, receive said \$50,000.00 in lawful money of the United States and deliver it to the said Thomas Henry Robinson, Jr.

And the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. did conceal and aid and abet each other in concealing the said Mrs. Alice Stoll from the 10th day of October, 1934 to the 16th day of October, 1934.

And the said Thomas Henry Robinson, Jr., did, on or about the 10th day of October, 1934, and continuing up to and including the 16th day of October, 1934, did strike, beat, bruise and injure the said Mrs. Alice Stoll while she was so abducted and concealed and held for ransom or reward as aforesaid, and did not release and liberate her unharmed.

Against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided.

USCA Title 18, Sec. 408-c.

Same penalty as 408-a.

Indictment

SECOND COUNT:

And the Grand Jurors aforesaid upon their oaths aforesaid do further present:

That heretofore, to-wit, on or about the 10th day of October, in the year of our Lord 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district, unlawfully did then and there knowingly transport and cause to be transported and aid and abet each other in transporting in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, and said person was not a minor and had not been seized and carried away by her parents, and did not liberate said person unharmed; that is to say, at said time and place the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. unlawfully did then and there transport and cause to be transported and aid and abet each other in transporting in interstate commerce, to-wit, in commerce from Louisville, in the State of Kentucky to Indianapolis, in the State of Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnaped, abducted and carried away from her home by the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., and held the said Mrs. Alice Stoll for ransom or reward, and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed.

Against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided.

USCA Title 18, Sec. 408-a.

T. J. Sparks,
United States Attorney.

Indictment

Witnesses:

Ann Woollet
 E. J. Connelley
 M. C. Falkner
 H. F. Small
 John I. Messmer
 R. E. Creager
 John E. Tarrant
 John M. Ridge
 W. L. Almon
 Charles Stoll
 Mrs. Berry V. Stoll
 Robt. Ring
 Thomas J. Conner
 M. H. Purvis
 A. E. Gohmann
 Berry V. Stoll

ORDER APPOINTING ROBERT E. HOGAN AND J. PAUL KEITH, ATTORNEYS FOR DEFENDANT AND FIXING SEPTEMBER 30, 1943 AT 10 O'CLOCK A. M. FOR ARRAIGNMENT—Entered by Judge Shackelford Miller, Jr., September 28, 1943.

On September 28, 1943 at ten o'clock a. m., the defendant, Thomas Henry Robinson, Jr. was brought into open court in custody of the United States Marshal. He said he had not employed any attorney and would like the Court to appoint two attorneys to represent him. The Court thereupon appointed Robert E. Hogan and J. Paul Keith, Jr. as his attorneys.

The defendant objected to the appointment of Mr. Hogan on the ground that there had been some differences of opinion between him and Mr. Hogan arising out of the

Order Appointing Robert E. Hogan, Etc.

Motion and Grounds for a new trial filed after the first hearing of this case.

The Court suggested that the defendant confer with Mr. Hogan and see if the matter could not be straightened out. The Court then recessed until a later hour in the day.

At 11 a. m. Court reconvened and the defendant again appeared in Court accompanied by Mr. Robert E. Hogan and announced to the Court that after discussing the matter with Mr. Hogan the appointment of Mr. Hogan and Mr. Keith was satisfactory to him.

The case was then passed for arraignment of the defendant to September 30, 1943 at 10 o'clock a. m.

AFFIDAVIT IN FORMA PAUPERIS OF THOMAS HENRY ROBINSON, JR.—Filed September 30, 1943.

State of Kentucky, }
County of Jefferson, } ss.

Thomas Henry Robinson, Jr., being first duly sworn, deposes and says:

That he is the defendant above named.

That he is a citizen of the United States by birth.

That the nature of this action is a prosecution based upon an indictment charging defendant with a violation of Title 18, U.S.C., section 408 (a).

That he is presenting the foregoing application in good faith.

That he believes that he is entitled to the rights and privileges requested in the foregoing application.

That because of his poverty, he is unable to pay for counsel or witness fees or for the costs of defending this action.

Affidavit in Forma Pauperis, Etc.

That he has no real or personal property in any way conveyed or concealed, or in any way disposed of, for his future use or benefit.

Thomas Henry Robinson, Jr.,
Defendant.

Subscribed and sworn to before me, this 28th day of September, 1943.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public,
Jefferson County, Kentucky.

**APPLICATION FOR APPOINTMENT OF COUNSEL
AND FOR LEAVE TO PROCEED IN FORMA
PAUPERIS**—Filed September 30, 1943.

The defendant respectfully moves the Court to appoint two counsel learned in the law to represent him in the above entitled cause for the reasons set forth in the accompanying affidavit in forma pauperis.

The Court's power to appoint two counsel, and the defendant's right thereto, are conferred by Title 18, United States Code, section 563. Further power to appoint counsel is conferred upon this Court by Title 28, United States Code, section 835.

The defendant further moves the Court to allow him to proceed in forma pauperis in the above entitled cause as provided for in Title 28, United States Code, section 832, for the reasons set forth in the accompanying affidavit in forma pauperis.

Dated: Sept. 28th, 1943.

Thomas Henry Robinson, Jr.,
Defendant.

DEFENDANT'S PLEA IN ABATEMENT

—Filed September 30, 1943.

The defendant, Thomas Henry Robinson, Jr., in his own proper person, having read the indictment against him, and protesting that he is not guilty of the premises charged in the said indictment, nevertheless says that the United States of America ought not further to prosecute the said indictment against him, because he says, upon information and belief, as follows:

That the Grand Jurors, by whom the said indictment was found and returned in this Court on October 20, 1934, were without power or jurisdiction to find or return the same, for the reason that the evidence adduced before them and submitted to them in connection with the charges against this defendant, as they are embraced and included in the aforesaid indictment, was not lawful, and that the same did not warrant or justify the finding or the return of the same; and for the further reason that the said Grand Jurors did not have submitted to them legal evidence of the matters and acts and incidents constituting the charges made against this defendant as they are included in the said indictment;

and upon information and belief, the defendant above named does hereby set forth and allege the following:

That the United States of America charges that the defendant did knowingly transport in interstate commerce a Mrs. Alice S. Stoll who had been unlawfully kidnaped and held for ransom, and that the defendant did not liberate said person unharmed;

That in support of the charge by the United States of America before the Grand Jurors that the defendant did not liberate Mrs. Alice S. Stoll unharmed from such alleged kidnaping and confinement, the United States of America did not produce or offer to or before the Grand Jurors any lawful or other evidence whatsoever;

That the United States of America did not offer to or before said Grand Jurors the testimony of Mrs. Alice S.

Defendant's Plea in Abatement

Stoll, or of any other person, to show that she was not liberated unharmed at the termination of the period during which the United States of America charges that the defendant held her for ransom, and that Mrs. Alice S. Stoll did not testify that she was harmed or injured in any way at the time of her alleged liberation;

That this defendant states of his own knowledge that Mrs. Alice S. Stoll was unharmed and of, and in, sound physical condition on October 16, 1934, the date on which the United States of America charges that the said Mrs. Alice S. Stoll was liberated from unlawful kidnaping and confinement; and he says that on said date she bore no scalp wounds or abrasions, or evidences of any injury whatsoever to her head or to any part of her body or person whatsoever;

That upon information and belief, this defendant states that on the morning of October 16, 1934, following defendant's departure from the apartment on North Meridian Street, Indianapolis, Indiana, where the said Mrs. Alice S. Stoll was alleged to have been unlawfully confined, the said Mrs. Alice S. Stoll and this defendant's wife, Mrs. Frances A. Robinson, remained in the apartment eating and engaging in conversation, until sometime in the afternoon of the same date, at which time the said Mrs. Alice S. Stoll and defendant's wife left the apartment and walked to the home of a Rev. Clegg, a relative of Mrs. Stoll; that the Rev. Clegg drove Mrs. Stoll and defendant's wife toward Louisville, but were intercepted on the way by agents of the Federal Bureau of Investigation; that at no time did Mrs. Alice S. Stoll complain of any injury or illness; that after Mrs. Stoll reached Louisville, her husband, Mr. Berry V. Stoll, stated to the press that his said wife was "all right"; that Mrs. Alice S. Stoll later stated that she had been well treated by this defendant during the period of the alleged confinement;

That upon information and belief this defendant states that the indictment should be quashed; that the said Mrs. Alice S. Stoll was sound and unharmed at the time of her alleged liberation; that therefore this case is not one in which the death penalty can be imposed;

Defendant's Plea in Abatement

That said indictment should be quashed for the further and additional reason that the indorsement on said indictment, a necessary part of said indictment, and Counts First and Second therein, and each of them, charge this defendant and Thomas Henry Robinson, Sr., and Mrs. Frances Robinson with conspiracy to do certain acts, therein named, in violation of law, and against the peace and dignity of the United States of America;

That said Thomas Henry Robinson, Sr., and said Mrs. Frances Robinson were tried, and acquitted, by a jury of this court duly sworn and empaneled to try the same, and that following said acquittal the Judge of this said Court caused to be entered upon the records of this Court an order adjudging that said Thomas H. Robinson, Sr., and Mrs. Frances Robinson to be not guilty as charged in the indictment, or in either count thereof;

That by reason of the aforesaid the United States of America ought not further to prosecute the said indictment against this defendant.

All the foregoing to the manifest injury and prejudice of the said Thomas Henry Robinson, Jr., and all the foregoing the said Thomas Henry Robinson, Jr., is ready to verify.

Wherefore, the said Thomas Henry Robinson, Jr., prays judgment of the said indictment; that the same may be quashed and dismissed, and further whether the United States ought to or can prosecute him in the premises, and that he may be discharged thereof.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

State of Kentucky, }
County of Jefferson, } ss.

Thomas Henry Robinson, Jr., being first duly sworn, deposes and says, that he is the defendant in the above entitled action; that he has read the foregoing plea in abatement and knows the contents thereof, and that same is true of his own knowledge, except as to the matters therein

Defendant's Plea in Abatement

stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

Subscribed and sworn to before me this 30th day of September, 1943, by Thomas Henry Robinson, Jr.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public,
Jefferson Co., Ky.

Notice of filing accepted:

Eli H. Brown, III
United States District Attorney
9/30/43

**ORDER ASSIGNING PLEA IN ABATEMENT FOR
ARGUMENT OCTOBER 6, 1943 AT 10 O'CLOCK
A. M.**—Entered by Judge Shackelford Miller, Jr., Sep-
tember 30, 1943.

Eli H. Brown, III, United States District Attorney and J. D. Inman, Assistant United States District Attorney appeared for the United States and the defendant appeared in open court in person and with his counsel, Robert E. Hogan and J. Paul Keith, Jr. He was asked by the court if he intended to make any claim that he was mentally incompetent now and replied that he did not intend to make any such claim. Both he and his counsel, Mr. Hogan also stated that no such claim would be made but he supplemented this statement with the additional one that a plea would be made that at the time the indictment was returned herein and before that, that he was mentally incompetent.

Order on Formal Arraignment and Plea, Etc.

He then in person and through his counsel filed written application for the appointment of two attorneys, and that he be allowed to proceed and defend this case in forma pauperis as he was without funds. He then filed a Plea in Abatement. Mr. Keith then asked the Court to permit him to withdraw as one of the counsel for the defendant, and the Court asked the defendant if he still wanted two attorneys appointed to defend him, to which he replied that one would do now and later on if any condition arose which necessitated the appointment of another counsel to assist Mr. Hogan he would ask for it.

Mr. Keith was allowed to withdraw as counsel upon the consent of the defendant. The Plea in Abatement was passed for argument to October 6, 1943 at 10 o'clock a. m.

**UNITED STATES MOTION FOR THE APPOINTMENT
OF PSYCHIATRISTS—Filed October 5, 1943.**

Comes the United States by counsel, and calls to the attention of the Court the fact that in open court on Thursday, September 30, 1943 the defendant Thomas Henry Robinson, Jr. in person and by his counsel Robert E. Hogan, stated to the Court that he was making no contention of being of unsound mind at this time, but that it would be contended that the defendant Robinson was of unsound mind on October 10, 1934, the date of the kidnaping of Mrs. Alice Speed Stoll.

The Court's attention is further directed to the decision of the Honorable Michael J. Roche, United States District Judge of the Northern District of California, rendered August 9, 1943, wherein it is stated that;

"An insane person cannot plead, nor can he be sentenced. The court was then under a duty to determine petitioner's mental condition before accepting plea."

United States Motion, Etc.

The Court is informed that counsel for the United States can envision a situation where at some future time, if a jury returns a verdict of guilty on the indictment heretofore returned, that the defendant Thomas Henry Robinson, Jr. can again apply for a writ of habeas corpus on the grounds that at the time he entered a plea of not guilty or a plea of guilty that he did not have sufficient mental capacity to enter a plea of any kind.

The Court is therefore moved to appoint four eminent psychiatrists to examine the said Robinson and make a report to the Court of his mental condition at this time prior to the acceptance by the Court of any plea from the said Robinson.

Eli H. Brown, III,
United States Attorney.

October 4, 1943.

**UNITED STATES MOTION TO STRIKE PLEA IN
ABATEMENT**—Filed October 5, 1943.

Came the United States by counsel and moves the Court to strike the plea in abatement heretofore filed by the defendant, Thomas Henry Robinson, Jr. on the following grounds:

1. That it does not state facts sufficient to constitute a plea in abatement.
2. That it alleges on knowledge facts which the Court will take judicial notice the defendant Thomas Henry Robinson, Jr., cannot know, and fails to state the source of information upon which the allegations are founded.
3. That the plea in abatement is not well taken under the law as made and provided herein.

There are attached hereto and made a part hereof of this motion to strike the affidavit of Capt. John I. Messmer, United States Army; the affidavit of Mrs. Alice Speed Stoll,

United States Motion to Strike Plea, Etc.

the affidavit of Berry V. Stoll and the affidavit of Honorable Claude Hudgins, who on October 20, 1934 was Assistant United States Attorney for the Western District of Kentucky at Louisville, and was in full charge of the presentation of the Government's case before a grand jury duly impaneled to inquire into all the facts surrounding the kidnaping of Mrs. Alice Speed Stoll, said affidavits being Exhibits "A", "B", "C", and "D".

Eli H. Brown, III,
United States Attorney.

October 4, 1943.

AFFIDAVIT OF JOHN I. MESSMER.

Comes your affiant John I. Messmer, who states that he is at present a Captain in the Army of the United States, at Fort Knox, Kentucky. That during the period October 1, 1934 to October 30, 1934 he was a Sergeant of Police, Louisville Police Department, Louisville, Kentucky.

Your affiant further states that he appeared before the United States Grand Jury at Louisville, Kentucky on October 20, 1934, and being first duly sworn, testified as follows:

That in the late afternoon of October 10, 1934 he received a call that Mrs. Alice Stoll had been kidnapped. That he immediately proceeded to the home of Mrs. Stoll on Lime Kila Road, Jefferson County, Kentucky, and was one of the first police officers to arrive at the scene of the crime. That he recovered at the scene of the crime, one screw driver, one piece of pipe approximately 18 inches long, wrapped in brown paper, a piece of adhesive tape, one table knife and three pieces of covered flexible wire. That he also saw and examined the ransom note left by the defendant Thomas Henry Robinson, Jr., in the home of Mrs. Stoll. That he received said ransom note and later

Affidavit of John I. Messmer

delivered same, together with other items of evidence above incorporated, to a special agent of the Federal Bureau of Investigation, United States Department of Justice.

That he made an examination of the home of Mrs. Stoll and particularly of a bedroom in the Stoll home. That he saw on the bed and on the pillowcase on the pillow on the bed in said bedroom in the home of Mrs. Stoll blood that had recently been spilled.

John I. Messmer.

Subscribed and sworn to before me by John I. Messmer this 1st day of October, 1943.

W. T. Beckham,

Clerk, U. S. District Court.

By S. G. Connaughton,

Deputy Clerk.

(Seal)*

"Exhibit A."

AFFIDAVIT OF MRS. ALICE SPEED STOLL.

Comes your affiant, Mrs. Alice Speed Stoll, and states that she appeared before the United States Grand Jury at Louisville, Kentucky on October 20, 1934, and after first being duly sworn, testified that on October 10, 1934 she was kidnapped by a man she later ascertained to be Thomas Henry Robinson, Jr. That prior to the time she was forced from her home she was given two severe blows on her head, which resulted in the loss of a good deal of blood. That she was placed in a car and taken to a city that she later learned to be Indianapolis, and remained in an apartment in that city in the custody and under the control of the kidnaper.

That during that stay on many occasions her wrists were bound, her mouth was taped and she was locked in a

Affidavit of Mrs. Alice Speed Stoll

closet at all times that the kidnaper was absent from the apartment.

That she was released on October 16, 1934 upon the payment to the kidnaper of \$50,000 of ransom money. That at the time of her release she was suffering from the wounds that she had been dealt and from the treatment she had undergone. That thereafter and for a long period of time it was necessary to have her wounds treated; and your affiant further states that she is still suffering from the effects of one of the blows dealt with an iron pipe by the kidnaper above her right ear and that her hearing has been impaired permanently as a result of said brutal and severe blow. That at the time of her release she was suffering bodily harm inflicted upon her at the time of the kidnaping and during the period of her captivity, and that she was only released upon the payment of the said \$50,000 ransom as demanded by the kidnaper on pain of her death. That during said captivity on many and divers occasions said kidnaper threatened her with great bodily harm and threatened to kill her if she made any attempt to escape.

Mrs. Alice Speed Stoll.

Subscribed and sworn to before me by Mrs. Alice Speed Stoll this 4th day of October, 1943.

(Seal)

Alice E. Spahn,
Notary Public, Jeff. Co. Ky.

My com. expires 1-6-47.

"Exhibit B."

AFFIDAVIT OF BERRY B. STOLL.

Comes your affiant, Berry D. Stoll, and states that he is a resident of Louisville, Jefferson county, Kentucky.

Your affiant further states that he appeared before the United States Grand Jury, Louisville, Kentucky, on October 20, 1934, and being first duly sworn, among other things testified as follows:

That he returned to his home on Lime Kiln Road late in the afternoon of October 10, 1934. When he arrived at his home, he found that his wife, Mrs. Alice Speed Stoll, had been kidnapped, and that there was discovered by him a ransom note; that he had found the ransom note and obtained same in his possession until he delivered it to an officer of the Louisville Police Department. That in his testimony before the Grand Jury he described the ransom note; described in detail the condition of the guest room in his home, from which Mrs. Stoll had been taken; and further testified that, on the bed in the guest room, there was recently-spilled blood.

Affiant further states that he testified that, on the next and succeeding days, he arranged to have the necessary amount of ransom in the amount of Fifty Thousand Dollars (\$50,000.00) made available to carry out the directions of the kidnapper and to effect the delivery of the Fifty Thousand Dollars (\$50,000.00) to Thomas H. Robinson, Sr., the intermediary mentioned in the kidnap note.

Your affiant further states and testifies that, after raising the ransom and after preparation for the delivery of the ransom, he waited at his home on Lime Kiln Road, on October 16, 1934, until his wife, Alice Stoll, was returned by agents of the Federal Bureau of Investigation.

(Signed) Berry V. Stoll.

Subscribed and sworn to before me by Berry D. Stoll this 4th day of October, 1943.

(Seal)

Alice E. Spahn,

Notary Public, Jefferson county, Ky.

My commission expires:

Jan. 6, 1947.

"Exhibit C."

AFFIDAVIT OF CLAUDE HUDGINS.

Comes your affiant, Claude Hudgins, and states that at present he is an attorney in the City of Louisville, with offices in the Kentucky Home Life Building. That during the period up to and including October 30, 1934 and for many years prior thereto he was an Assistant United States Attorney for the Western District of Kentucky, at Louisville, Kentucky.

Your affiant further states that he was in charge of the presentation of all evidence that was presented to the duly impaneled United States Grand Jury held at Louisville, Kentucky on October 20, 1934, at which time the Grand Jury heard evidence and inquired into all facts surrounding the kidnaping of Mrs. Alice Speed Stoll. Your affiant further states that all witnesses were duly sworn, and the witnesses that appeared were as follows:

John E. Tarrant, attorney, Kentucky Home Life Building, who testified as to the delivery of the ransom money package to the Railway Express Agency, Louisville, Kentucky, on October 12, 1934 at about 1:30 A. M., it being delivered by him to John M. Ridge, agent, Railway Express Agency.

John M. Ridge—Your affiant further says that John M. Ridge testified of the receipt by him of the ransom money package. That he accompanied said package from Louisville, Kentucky to Nashville, Tennessee on October 12, 1934 and that he delivered the package to W. L. Almon, manager, Railway Express Agency.

* W. L. Almon, manager, Railway Express Agency, Nashville, Tennessee testified that he received said package from J. M. Ridge at Nashville, Tennessee on October 12, 1934, and delivered the package to Thomas Henry Robinson, Sr. at Nashville, on October 15, 1934.

Your affiant further states that R. Creager, an officer of the Louisville Police Department, appeared and testified that he received the original ransom note on October 10, 1934 from Berry V. Stoll, and delivered same to John I. Messmer, of the Louisville Police Department. That

Affidavit of Claude Hudgins

said ransom note demanded the payment of \$50,000. and if the money was not paid Mrs. Stoll would be killed.

Affiant further states that John I. Messmer appeared and testified that he received the ransom note from Robert Creager and introduced a photograph of the ransom note that he had made and read the said ransom note to the Grand Jury.

Your affiant further states that Berry V. Stoll appeared and testified as to the finding of the ransom note on the bed where his wife had been struck. That there were spots of blood on the bed that had recently been spilled. Said Berry V. Stoll further produced \$470.00 of the ransom money turned over to him by his wife after she had obtained the same from Mrs. Thomas Henry Robinson, Jr. in the vicinity of Scottsburg, Indiana.

Your affiant further states that Mrs. Alice Speed Stoll appeared and testified that on October 10, 1934 she was kidnapped by Thomas Henry Robinson, Jr., after having been brutally struck twice with a lead pipe on and about her head, causing her to lose a great deal of blood. She testified her hands were bound with wire and that she was placed in the bottom of a car and taken to a city which she later learned to be Indianapolis. That she was held captive for a period of six days and that on numerous and different occasions during that captivity her hands were tightly bound, her mouth was gagged and she was locked in a closet in the apartment in Indianapolis. That at the time of the payment of the ransom money to the kidnapper by his then wife, Mrs. Frances Robinson, she was released, suffering from the severe beating that she had received. That it was necessary that she have and she did have medical attention. That said wounds were not healed at the time of her release and that up to the time of her testimony she was suffering great pain and injury as a result of the brutal treatment and wounds she had received from Thomas Henry Robinson, Jr.

Your affiant further states that Melvin H. Purvis, a special agent, Federal Bureau of Investigation, appeared and testified that he had seen Mrs. Thomas Henry Robin-

Affidavit of Claude Hudgins

son, Jr. turn over to Mrs. Berry V. Stoll, the victim, \$470, being part of the ransom money, while riding in a car in the vicinity of Scottsburg, Indiana. That Mr. Purvis found Mrs. Stoll, Dr. and Mrs. Clegg and Mrs. Robinson, Jr. in a Studebaker sedan automobile on a highway in the vicinity of Scottsburg, Indiana. That Mrs. Stoll was taken by Mr. Purvis from the vicinity of Scottsburg and taken to her home on Lime Kiln Road, Jefferson County, Kentucky.

Your affiant further states that Anna Woollet appeared and testified that on October 10, 1934 she was a maid in the home of Mrs. Stoll. That the kidnapper had forced her at the point of a gun to take him to Mrs. Stoll's room. That the kidnapper had said that he was going to kidnap Mrs. Stoll and when Mrs. Stoll resisted and attempted to take the gun from the kidnapper, that the said Thomas Henry Robinson, Jr., brutally struck her two severe blows on the head with an iron pipe, causing blood to be spilled on the bed and pillowcase in the guest room at Mrs. Stoll's home. That Mrs. Stoll's wrists were bound tightly with wire and that she, Anna Woollet, was bound to prevent her escaping and giving an alarm.

Claude Hudgins.

Subscribed and sworn to before me by Claude Hudgins this 4th day of October, 1943.

(Seal)

James P. Miller,
Notary Public Jeff. Co. Ky.

My commission expires
February 28, 1947.

"Exhibit D."

**MEMORANDUM OF AUTHORITIES, ON GOVERN-
MENT'S MOTION TO STRIKE**—Filed October 5, 1943.

In support of the Government's motion to strike plea in abatement heretofore filed, the Court is informed that the United States will rely on the principles enunciated in the following listed cases:

Olmstead v. United States, 19 Fed. (2d) 842
Olmstead v. United States, 277 U. S. 438
Shreve v. United States, 77 Fed. (2d) 2
Walker v. United States, 93 Fed. (2d) 383
United States v. Standard Oil Company, 154 Fed. 728
United States v. Silverthorne, 265 Fed. 759
United States v. Goldman, 28 Fed. (2d) 424
United States v. Rintelen, 235 Fed. 787
United States v. Jones, 16 Fed. Supp. 135
Craven v. United States, 62 Fed. (2d) 261
Nevin v. United States, 199 Fed. 831.

Eli H. Brown, III,
United States Attorney.

October 5th, 1943

**ADDITIONAL MEMORANDUM OF AUTHORITIES ON
GOVERNMENT'S MOTION TO STRIKE**—Filed
October 5, 1943.

In opposition to that portion of the defendant's plea in abatement dealing with the acquittal of Robinson, Sr., and Mrs. Robinson, I call to the attention of the Court the following cases which are conclusive against defendant's contention:

Gozner v. United States, 9 Fed. (2d) 603
United States v. Yusen, 2 Fed. (2d) 163
Kelly v. United States, 258 Fed. 392
Dane v. United States, 18 Fed. (2d) 811
Grove v. United States, 3 Fed. (2d) 965
Chiaravalotti v. United States, 60 Fed. (2d) 192.

Eli H. Brown, III,
United States Attorney.

October 5, 1943.

**DEFENDANT'S MOTION TO BE PERMITTED TO IN-
QUIRE INTO PROCEEDINGS AND EVIDENCE
BEFORE GRAND JURY**—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the court for an order permitting and allowing the defendant to inquire into the proceeding and evidence of the Grand Jury which returned the indictment in this said case on October 20, 1934, for the purpose of establishing whether or not any witness testified whether or not Alice S. Stoll was liberated unharmed at the time set out in the said indictment; and to permit this defendant to inspect the minutes of said Grand Jury, and to procure testimony and affidavits from said Grand Jurors and witnesses who testified before said

Defendant's Motion, Etc.

Grand Jury as to whether or not any person whatsoever testified whether or not the said Mrs. Stoll was liberated unharmed at the time specified in said indictment; and permit this defendant to use such information and affidavits thus obtained in support of his Plea in Abatement.

Thomas Henry Robinson, Jr.,
Defendant pro se.
Robert E. Hogan,
Counsel for Defendant.

**AFFIDAVIT OF ROBERT E. HOGAN, ATTORNEY FOR
DEFENDANT—Filed October 6, 1943.**

Affiant, Robert E. Hogan, states that he is a practicing attorney of Louisville, Kentucky, that he was appointed by the Judge of this Court as counsel for the defendant, Thomas Henry Robinson, Jr., and that this affiant is now the duly appointed and acting said attorney for said defendant.

Affiant further states that Claude Hudgins on and prior to October 20, 1934, was the duly appointed and acting Assistant United States District Attorney for the United States District Court for the Western District of Kentucky; that said Claude Hudgins as such Assistant United States Attorney introduced each and all of the witnesses in the above styled case who testified before the Grand Jurors which later returned the indictment in this said case, and was present before said Grand Jury during all of the time evidence was presented before that said body on October 20, 1934, in this said case.

Affiant further states that on Thursday, September 30, 1943, said Claude Hudgins volunteered to this affiant the fact that he, the said Hudgins, had presented the evidence in this case to the said Grand Jury which later re-

Affidavit of Robert E. Hogan

turned the said indictment and said Claude Hudgins on said September 30, 1943, when asked by this affiant whether or not Mrs. Alice S. Stoll, or any other witness, had testified before said Grand Jury as to whether or not Mrs. Alice S. Stoll was liberated unharmed, as is alleged and charged in the said indictment in this case and admitted to this affiant that neither Mrs. Stoll nor any other witness had testified before said Grand Jury on the physical condition of said Alice S. Stoll at the time she was allegedly liberated as set out in said indictment; that said information was given freely and voluntarily by said Claude Hudgins and at a time before he knew or had been advised that the defendant in this said case was going to claim in his plea in abatement that no person whatsoever testified to or before said Jury on said question, and that no lawful or competent evidence on such point was introduced to or before said Grand Jury.

In Testimony Whereof, witness the signature of this affiant this 5th day of October, 1943.

Robert E. Hogan,
Affiant.

Subscribed and sworn to before me this 5th day of October, 1943, by Robert E. Hogan.

My commission expires July 15, 1945.

Harry P. Embs,
Notary Public,
Jefferson County, Kentucky.

(Seal)

**MEMORANDUM OF DECISIONS TO BE RELIED UPON
BY DEFENDANT IN SUPPORT OF THE PLEA IN
ABATEMENT**—Filed October 6, 1943.

U. S. v. Parker, 103 F. 2d 857;
Nanfito v. U. S., 20 F. 2d 376;
May v. U. S., 236 F. 495;
Brady v. U. S., 24 Fed. 2d 405;
McKinney v. U. S., 199 Fed. 25.

Robert E. Hogan,
Counsel for the Defendant.

**ORDER OVERRULING MOTION TO PROCURE AFFI-
DAVITS FROM GRAND JURORS**—Entered by Judge
Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the motion by the defendant to allow the defendant to inquire into the proceedings and evidence of the Grand Jury which returned the indictment in this case on October 20, 1934 and to permit this defendant to inspect the minutes of said grand jury and to procure testimony and affidavits from said Grand Jurors and witnesses, and the court being sufficiently advised, and it appearing from statement of the United States Attorney that no transcript of any evidence was taken before said Grand Jury on October 20, 1934, and it further appearing by affidavits filed as Exhibits "A," "B," "C" and "D," attached to and made a part of the motion to strike heretofore filed, wherein it affirmatively appears that competent evidence to sustain the charge laid in the indictment was heard before said Grand Jury, and it further appearing that no basis or foundation has been shown to the court of any incompetent or prejudicial evidence being introduced before said Grand Jury, and it further appearing from the testimony in open

Order Overruling Motion, Etc.

court of Honorable Claude Hudgins, then Assistant United States Attorney, that competent and legal evidence was presented before said Grand Jury, and counsel for the defendant having declined to produce or offer any affidavits or other proof other than the affidavit of the defendant Thomas Henry Robinson, Jr. and his own affidavit.

It Is Ordered that said motion to procure testimony and affidavits from said Grand Jurors be and is hereby overruled, to all of which defendant by counsel objects and excepts.

**MOTION FOR A RULE TO COMPEL UNITED STATES
TO REPLY TO PLEA IN ABATEMENT**—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for a rule to issue against the plaintiff, United States of America, to show cause, if any it has or can, why it should not be compelled to reply to the Plea in Abatement filed by the defendant in this action.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.
Robert E. Hogan,
Counsel for Defendant.

ORDER FOR RULE TO ISSUE AND ADJUDGING MOTION TO STRIKE SUFFICIENT ANSWERS TO MOTION FOR RULE—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on for hearing on motion for a rule by the defendant in person and by counsel to require the United States of America to show cause, if any it has or can, why it should not be compelled to reply to the plea in abatement filed by the defendant, and the court being sufficiently advised,

It Is Ordered that the rule issue; and it further appearing that the United States has heretofore filed a motion to strike the plea in abatement supported by affidavits, being Exhibits "A," "B," "C," and "D," to which reference is made herein,

The court Orders, Adjudges and Decrees that said motion to strike, supported by affidavits, be and is hereby declared sufficient to answer said motion for a rule, to which counsel for defendant objects and excepts.

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION FOR THE APPOINTMENT OF PSYCHIATRISTS—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order striking the motion of the plaintiff, United States of America, for the appointment of Psychiatrists to examine the defendant and make a report to the Court of his mental condition at this time and prior to the acceptance by the Court of any plea from the said Thomas Henry Robinson, Jr., on the following grounds:

1. That there is no basis for the appointment of any Psychiatrists to inquire into his mental condition.

Defendant's Motion to Strike Plaintiff's Motion, Etc.

2. Because the said defendant has expressly waived his rights to rely upon present insanity.

3. That the motion of the plaintiff is not well taken under the law as made and provided in such cases.

4. Because in open court on Thursday, September 30, 1943, the defendant, Thomas Henry Robinson, Jr., in person and by counsel duly appointed to represent him, and at that time represented him, admitted that said defendant, Thomas Henry Robinson, Jr., is now sane.

5. Because it has already been determined by the United States District Court for the Northern District of California in a proceeding in which the defendant Thomas Henry Robinson, Jr. and James A. Johnson, Warden United States Penitentiary, Alcatraz, California, an agent, servant and employee of the plaintiff, United States, were parties thereto, that said Thomas Henry Robinson, Jr. is now sane, that said determination is res judicata of that fact, and the plaintiff is now estopped by reason of said facts to question this defendant's sanity or insanity at this time.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.

Robert E. Hogan,
Counsel for Defendant.

**ORDER OVERRULING MOTION TO STRIKE MOTION
BY THE UNITED STATES FOR THE APPOINT-
MENT OF PSYCHIATRISTS**—Entered by Judge
Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the motion of the United States for the appointment of psychiatrists to render a report to the court prior to the acceptance of any plea from the defendant Robinson and on the motion to strike the United States' motion for the appointment of psychiatrists, and it appearing that a contention has been raised as to the defendant's sanity, and the court being desirous of medical testimony as to the sanity or insanity of the defendant Robinson, in addition to such different and other evidence as the court in its discretion may consider,

It Is Ordered and Adjudged that the motion to strike the United States' motion for the appointment of psychiatrists be and is hereby overruled, and the motion of the United States for the appointment of psychiatrists to render a report to the court prior to the acceptance of any plea from the defendant Robinson is sustained, to all of which counsel for defendant objects and excepts.

DEFENDANT'S MOTION TO DISMISS

—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order dismissing the indictment and prosecution in this case because the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution, guaranteeing that right, has been violated by the delay of some seven or more years, during all of which time the defendant was in the custody of the United States at all times and available for trial.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.
Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING MOTION TO DISMISS—Entered
by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the motion to dismiss heretofore filed, wherein it is stated that said indictment should be dismissed "because the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution, guaranteeing that right, has been violated by the delay of some seven or more years, during all of which time the defendant was in the custody of the United States at all times and available for trial," and the court being advised that from October 10, 1934 to and including May 10, 1936 the defendant Robinson was a fugitive from justice, and it further appearing that on May 13, 1936 the defendant Robinson entered a plea of guilty to count two of the indictment and was thereupon ordered imprisoned for his natural life, and it further appearing that on August 9, 1943 the Honorable Michael J.

Order Overruling Motion to Dismiss

Roche, United States District Judge for the Northern District of California, granted this defendant a writ of habeas corpus, and that no unnecessary delays have resulted,

It Is Ordered and Adjudged that said motion to dismiss be and is hereby overruled, to which counsel for defendant objects and excepts.

DEFENDANT'S MOTION TO ELECT—Filed
October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order requiring the plaintiff, United States of America, to elect which of the counts in the indictment upon which it desires to prosecute this defendant.

Thomas Henry Robinson, Jr.,
Defendant Pro Se.
Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING MOTION TO ELECT—Entered
by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on motion by the defendant to require the United States to elect which of the counts in the indictment upon which it desires to prosecute this defendant, and it appearing that count one of the indictment, being a conspiracy count charging the defendants Thomas Henry Robinson, Sr., Mrs. Frances Robinson and Thomas Henry Robinson, Jr. with conspiring to kidnap and hold for ransom and transport from Kentucky to Indiana Mrs. Alice Speed Stoll, and it further appearing that by verdict of a jury the defendants Thomas Henry Robinson, Sr. and Mrs. Frances Robinson were acquitted, and it further appearing that on May 13, 1936 Honorable Elwood Hamilton, then United States District Judge for the Western District of Kentucky dismissed on his own motion count one of the indictment as to the defendant Thomas Henry Robinson, Jr., and it further appearing by the affirmative statement of Eli H. Brown, III, United States Attorney for the Western District of Kentucky that the Government would only prosecute count two of said indictment,

It Is Ordered and Adjudged that said motion to elect be and is hereby overruled, to which counsel for defendant objects and excepts.

DEFENDANT'S DEMURRER TO INDICTMENT

—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and demurs to the indictment herein and to each count thereof, and for grounds of said demurrer, states:

1. That the matters and things alleged in said indictment do not constitute any offense against the laws of the United States and said indictment does not contain facts sufficient to charge this defendant with the commission of an offense against the laws of the United States of America.

2. That said indictment is not sufficiently definite or certain to conform to the requirements of the Fifth and Sixth amendments to the Constitution of the United States, or to enable this defendant to properly prepare his defense.

3. That the second count of said indictment is duplicious in that more than one separate and distinct offense is charged in said count.

Wherefore, the defendant, Thomas Henry Robinson, Jr., asks that this demurrer be sustained and that said indictment be quashed and dismissed.

Thomas Henry Robinson, Jr.,
Defendant pro se.
Robert E. Hogan,
Counsel for Defendant.

ORDER OVERRULING DEMURRER—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on for hearing on demurrer to the indictment, and the Court being advised, upon consideration of the indictment and being of the opinion that said demurrer is not well taken,

It is Ordered and Adjudged that same be and is hereby overruled, to which counsel for defendant objects and excepts.

ORDER APPOINTING PSYCHIATRISTS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard, and the court having considered the motion of the United States Attorney, Eli H. Brown, III, to appoint four eminent psychiatrists to examine the said defendant Robinson and render a report to the court as to the present sanity or insanity of the said defendant, and in order for the court to be advised,

It is Ordered and the court does appoint the following psychiatrists:

Dr. W. E. Gardner, Brown Building, Louisville Kentucky;

Dr. Spafford Ackerly, 610 So. Floyd, Louisville Kentucky;

Dr. Isham Kimbell, Supt. Central State Hospital, Lakeland, Ky.;

Dr. E. E. Landis, General Hospital, Louisville, Kentucky,

to conduct such examination as they deem necessary of the defendant Thomas Henry Robinson, Jr. and to render the court a report so that the court may have for its consideration the opinion of psychiatrists in addition to such other and different facts as the court may desire to know.

ORDER OVERRULING MOTION TO FIX DEFENDANT'S BAIL—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on for hearing on the oral motion of the defendant by his counsel in open court to fix the bail of the defendant Thomas H. Robinson, Jr., in the amount of \$5,000.00, and it appearing that the defendant by his counsel, Robert E. Hogan, stated that said matter was entirely within the Court's discretion, and it appearing that said indictment charges a capital offense, and it further appearing that prior to the offense alleged in the indictment returned October 20, 1934 that the defendant Robinson had been charged with the offense of burglary, impersonating an officer and other offenses in the State of Tennessee, and it further appearing that the ransom of \$50,000.00 in the kidnapping case was paid to the defendant Robinson and only a fraction thereof recovered, and it further appearing that the defendant Robinson was a fugitive from justice from October 10, 1934 to May 10, 1936, and the court being sufficiently advised,

It is Ordered that the defendant be held in the Jefferson County Jail without bond pending the trial of this cause, to all of which the defendant by counsel objects and excepts.

ORDER SUSTAINING MOTION TO STRIKE PLEA IN ABATEMENT—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

This cause coming on to be heard on the Plea in Abatement heretofore filed by the defendant Thomas Henry Robinson, Jr., and the Motion to Strike Plea in Abatement heretofore filed on behalf of the United States, and the Court being sufficiently advised, and having considered the Plea in Abatement and the Motion to Strike Plea in Abatement, supported by affidavits of persons who testified before the Grand Jury on October 20, 1934, and the testimony in person of Claude Hudgins, former Assistant United States Attorney in charge of the presentation of all evidence before the aforesaid Grand Jury, and it further appearing that by order entered October 6, 1943, the Court has overruled motion to procure affidavits from Grand Jurors, and it further appearing that the defendant Robinson by counsel having advised the Court that he desired to offer no additional proof than said testimony by Grand Jurors, the verified Plea in Abatement and the testimony of Claude Hudgins,

It is Ordered that the Motion to Strike Plea in Abatement be and the same is hereby sustained, to which the defendant by counsel objects and excepts.

ORDER ALLOWING DEFENDANT TO DEFEND THIS ACTION IN FORMA PAUPERIS—Entered by Judge Shackelford Miller, Jr., October 6, 1943.

The Motion of the defendant that he be allowed to proceed and defend this action in forma pauperis having been considered by the Court is sustained and he is allowed to defend this action in forma pauperis.

**DEFENDANT'S WAIVER AS TO CONTENTION OF
INSANITY**—Filed October 6, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and without waiving or prejudice to his right to contend that he was insane prior to, and at the time of, and for some time following the times, dates and incidents set forth and incorporated in the indictment in this said case, hereby expressly waives his right to contend or claim that he is now (at the present time) insane.

Thomas Henry Robinson, Jr.,
Defendant pro se,

Counsel for Defendant.

ORDER ON FORMAL ARRAIGNMENT AND PLEA—

Entered by Judge Shackelford Miller, Jr., October 13, 1943.

This cause coming on for hearing on October 13, 1943 in open court and the defendant Thomas Henry Robinson, Jr., being present in person and by counsel, Robert E. Hogan, and the United States being present by counsel, Eli H. Brown, III, United States Attorney for the Western District of Kentucky,

And it appearing that a report has been made to the presiding judge by Drs. Ackerly, Gardner, Kimball and Landis, psychiatrists previously appointed to advise the court of the mental condition of the defendant Robinson, and it further appearing that the psychiatrists unanimously had reported that in their opinion the defendant was sane, and the court having observed the bearing, the demeanor and the appearance of the said Robinson and having been fully advised, finds that at the time of said arraignment

Order on Formal Arraignment and Plea

the defendant Robinson was sane and capable of pleading to said indictment,

And said indictment having been read in full to the defendant Robinson and the court having advised him thereto, whereupon the said defendant was asked by the court what plea he desired to enter, and the defendant Robinson entered a plea of not guilty to the indictment.

The Court then informed the defendant that the case could be and would be speedily tried and that dates of November 1, 1943 or November 29, 1943 were open and the trial could start on either of said dates, whereupon the defendant in person and by counsel, Robert E. Hogan, requested the court to assign the case for trial beginning Monday, November 29, 1943.

Thereupon, the court, being fully advised, and at the request of the defendant Robinson in person and by counsel in open court assigned the case for trial on the defendant Robinson's plea of not guilty for 9:30 A. M. Monday, November 29, 1943 in the United States District Court at Louisville, Kentucky.

DEFENDANT'S MOTION FOR ORDER OF PERSONAL ATTENDANCE OF DOCTORS TO BE PAID BY UNITED STATES—Filed November 9, 1943.

Comes the defendant, Thomas H. Robinson, Jr., in person and by counsel, and moves the Court for an order of personal attendance of Doctor Leon Solomon, having offices in the Fincastle Building, Third and Broadway, Louisville, Kentucky, and of Doctor Thomas J. Crice, Starks Building, 4th and Walnut, Louisville, Kentucky, upon the trial of the above entitled cause, as witnesses for and on behalf of this defendant; and that the costs incurred by the processes and the fees of said witnesses be paid by the

Defendant's Motion for Order, Etc.

United States of America, as in cases of witnesses subpoenaed in behalf of the United States.

Thomas H. Robinson, Jr.,
Defendant pro se.
Robert E. Hogan,
Counsel for Defendant.

Notice waived.

Eli H. Brown, III.

DEFENDANT'S AFFIDAVIT—Filed November 9, 1943.

Affiant, Thomas H. Robinson, Jr., states that he is the defendant in the above styled cause; that he is under indictment in the above entitled cause in the United States District Court for the Western District of Kentucky; that Doctors Leon Solomon and Thomas J. Crice are witnesses, whose evidence is material to this defendant's defense; that he expects to prove by each of them that at the time of, prior to, and subsequent to the time mentioned in the indictment in the above entitled cause, this defendant was insane, and that he at said times did not know wrong from right, and was not mentally capable, medically or legally, of committing any offense, including the offense and/or offenses set forth in the aforesaid indictment; that said doctors have offices in Louisville, Jefferson County, Kentucky, and are within the district in which the United States Court for the Western District of Kentucky is held; that they are within 100 miles of the place where the trial of this defendant is to be conducted; that this defendant is not possessed of sufficient means and is actually unable to pay the fees of said doctors; that the testimony of said witnesses is important and material and that the just and proper effect thereof cannot, in a reasonable degree be had

Defendant's Affidavit

without their personal attendance and oral examination in court upon the trial of the above entitled cause.

Witness the signature of the affiant this 8th day of November, 1943.

Thomas H. Robinson, Jr.,
Defendant.

Subscribed and sworn to before me this 8th day of November, 1943, by Thomas H. Robinson, Jr.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public, Jefferson
County, Ky.

(Seal)

Notice waived—Eli H. Brown III.

**ORDER SUSTAINING DEFENDANT'S MOTION FOR
PERSONAL ATTENDANCE OF PHYSICIANS AND
PAYMENT OF THEIR FEES**—Entered by Judge
Shackelford Miller, Jr., November 9, 1943.

This cause having come on to be heard upon the motion of the defendant, Thomas Henry Robinson, Jr., supported by the affidavit of said defendant, filed herein, for an order of personal attendance of Doctors Leon Solomon and Thomas J. Crice and requiring them to appear upon the trial of the above entitled cause, as witnesses for and on behalf of the defendant, and that the costs incurred by the processes and that the fees of said witnesses be paid by the United States of America, as in cases of witnesses subpoenaed in behalf of the United States; and, the Court being sufficiently advised, and having considered said Motion and said affidavit, said Motion is hereby sustained, and the clerk of this court is hereby directed to issue subpoenae for Doctors Leon Solomon and Thomas J. Crice

Order Sustaining Defendant's Motion, Etc.

to appear personally in Court upon the trial of this cause, commencing November 29, 1943, to testify for and on behalf of said defendant.

It is further ordered that the costs incurred by the processes and the fees of said witnesses, in a reasonable sum, to be later fixed by the Court, be paid by the United States of America, as in cases of witnesses subpoenaed in behalf of the United States.

DEFENDANT'S MOTION FOR WITNESSES AND PAYMENT OF FEES—Filed November 24, 1943.

Comes the defendant, Thomas H. Robinson, Jr., in person, and by counsel, and moves the Court for an order of personal attendance of the following witnesses:

- Doctor H. B. Brackin, c/o Davidson County Poor Farm, Nashville, Tennessee;
- Doctor Horace Gayden, Church Street, near 7th, Nashville, Tennessee;
- Mrs. Frances Payne, c/o U. S. Employment Service, Bureau, Cotton States Building, Nashville, Tennessee;
- Richard M. Atkinson, Attorney, 3rd National Bank Bldg., Nashville, Tennessee;
- J. G. Lackey, Attorney, 601 Stahlman Building, Nashville, Tennessee;
- Mrs. Jessie Robinson, 1211 Cedar Lane, Nashville, Tenn.,

and that the fees of said doctors, the fees, expenses, and costs or other items of expense, including the fees of the United States Marshal, at Nashville, Tennessee, incident and necessary to having said witnesses subpoenaed, pro-

Defendant's Motion for Witnesses, Etc.

cured and brought to this court to testify for and on behalf of this defendant, be paid by the United States of America.

Thomas H. Robinson, Jr.,
 Defendant Pro Se.
 Robert E. Hogan,
 Counsel for Defendant.

DEFENDANT'S AFFIDAVIT IN SUPPORT OF MOTION FOR WITNESSES—Filed November 24, 1943.

Affiant, Thomas H. Robinson, Jr., states that he is the defendant in the above styled cause; that he is under indictment in the above entitled cause in the United States District Court for the Western District of Kentucky; that Doctors H. B. Brackin and Horace Gayden are practicing physicians, having offices in or near Nashville, State of Tennessee; that they are witnesses for and on behalf of this defendant; that said Dr. Gayden has an office at or near 7th and Church Streets, Nashville, Tennessee; and said Dr. Brackin has an office at the Davidson County Poor Farm, in or near Nashville, County of Davidson, State of Tennessee.

Affiant further states that Mrs. Frances Payne, care of U. S. Employment Service Bureau, Cotton States Building, Nashville, Tennessee; Richard M. Atkinson, Attorney, 3rd National Bank Building, Nashville, Tennessee; J. G. Lackey, Attorney, 601 Stahlman Building, Nashville, Tennessee; and Mrs. Jessie Robinson, 1211 Cedar Lane, Nashville, Tennessee, are witnesses whose evidence is material to this defendant's defense; that this defendant cannot safely go to trial without them; that this defendant expects to prove by them that at the time of, prior to, and subsequent to, the time mentioned in the indictment in the above entitled cause, this defendant was insane, medically and

Defendant's Affidavit in Support of Motion, Etc.

legally, and that he, at and during said time, did not know right from wrong, and was not mentally capable, medically or legally, of understanding the nature or purport of his acts, or the consequences thereof; and that, if he did or was able to understand wrong from right, that he was not able, because of insanity, to resist the urge or impulse to do or commit the acts mentioned in the indictment in this cause; that said witnesses are without the district in which the United States Court for the Western District of Kentucky is held, and are not within 100 miles of the place where the trial of this defendant is to be conducted, but that, nevertheless, said witnesses, and each of them, are important and material witnesses for this defendant, and that he cannot go safely to trial without them, and that the just and proper effect of their testimony cannot, in a reasonable degree, be had without their personal attendance and oral examination in court upon the trial of the above entitled cause.

Affiant further states that he is not possessed of sufficient means, and is actually unable to pay the fees of said doctors, the fees, expenses, and costs of other items of expense, including the fees of the Marshal of the United States for the Middle District of Tennessee, located at Nashville, Tennessee, incident and necessary to having said witnesses subpoenaed, procured and brought to the court in the district wherein and whereat said trial of this defendant upon said indictment is to be held; and affiant states that, unless the said aforesaid costs incurred by the processes and the fees, and traveling expenses, and all other expenses incident to procuring and producing said witnesses personally in court upon the trial of the above entitled cause, shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the United States or paid by the United States in some manner, this defendant cannot go safely to trial, and will not be able to have a fair and impartial trial.

Witness the signature of this affiant this the 23rd day of November, 1943.

Thomas H. Robinson, Jr.,
Defendant.

Defendant's Affidavit in Support of Motion, Etc.

Subscribed and sworn to before me this the 23rd day of November, 1943.

My commission expires September 8, 1946.

Robert E. Hogan,
Notary Public,
Jefferson County, Ky.

**ORDER OVERRULING DEFENDANT'S MOTION FOR
ORDER OF PERSONAL ATTENDANCE OF WIT-
NESSES**—Entered by Judge Shackelford Miller, Jr.,
November 24, 1943.

Came the defendant by counsel, Robert E. Hogan, and
tendered his motion for an order of personal attendance for
the following witnesses:

Dr. H. B. Brackin,
c/o Davidson County Poor Farm,
Nashville, Tennessee.

Dr. Horace Gayden,
Church Street, near 7th,
Nashville, Tennessee.

Mrs. Frances Payne,
c/o U. S. Employment Service Bureau,
Cotton States Building,
Nashville, Tennessee.

Richard M. Atkinson, Attorney,
3rd National Bank Building,
Nashville, Tennessee.

J. G. Lackey, Attorney,
601 Stahlman Building,
Nashville, Tennessee.

Mrs. Jessie Robinson,
1211 Cedar Lane,
Nashville, Tennessee.

Order Overruling Defendant's Motion, Etc.

together with the defendant's affidavit that the above witnesses are necessary to his defense and stating that he expected to prove that the defendant at the time of the commission of the offense charged in the indictment and prior thereto and subsequent was a person of unsound mind; that the said defendant is without funds to cover the expenses and fees for said witnesses and the fees of the United States Marshal for service and requested that an order be entered requesting the United States to pay said fees.

It appearing that the defendant, by counsel, stated to the Court that all witnesses covered in the motion and affidavit resided in or near Nashville, Tennessee, outside of the jurisdiction of the Western District of Kentucky, and residing more than 100 miles away to-wit: approximately 195 miles.

Wherefore, the Court having considered said motion and having asked the United States Attorney if he had any objection thereto and being sufficiently advised of the provisions of the statute applicable thereto, title 28 U.S.C.A. section 656, and it further appearing that the United States Attorney stated to Robert E. Hogan, counsel for defendant, that he, the said United States Attorney, would cause a subpoena to be issued for each of said witnesses at the time requested by defendant and by his counsel,

It Is Ordered and Adjudged that motion and affidavit be and they are hereby filed, and upon consideration said motion is overruled with exception to the defendant.

**ORDER FILING AFFIDAVIT OF HAROLD HALL,
DEPUTY UNITED STATES MARSHAL AS TO
SERVICE OF LIST OF WITNESSES AND JURORS
AND THEIR ADDRESSES ON DEFENDANT AND
HIS COUNSEL—Entered November 27, 1943.**

Came the United States District Attorney and tendered the affidavit of Harold Hall, Deputy United States Marshal, as to service of lists of witnesses and addresses, and names and addresses of all jurors summoned to appear before the United States District Court at Louisville on November 29th and November 30, 1943, both as to the defendant in person and as to his counsel.

It is ordered that said affidavit be filed.

**AFFIDAVIT OF HAROLD HALL, DEPUTY UNITED
STATES MARSHAL AS TO SERVICE OF LIST
OF WITNESSES AND JURORS AND THEIR AD-
DRESSES ON DEFENDANT AND HIS COUNSEL
—Filed November 27, 1943.**

Comes your affiant Harold Hall and states that he is a Deputy United States Marshal for the Western District of Kentucky.

Your affiant further avers that on Thursday, November 25, 1943, between the hours of 4:30 P. M. and 5:30 P. M., at the direction of the United States Attorney for the Western District of Kentucky, he served on and delivered to the defendant Thomas Henry Robinson, Jr., a true copy of the indictment pending in this district against the said Robinson, a complete list of the names and addresses of all witnesses who will appear at the direction of the Government to prove the said indictment and a complete list of all jurors who have been summoned to appear on November 29, 1943.

Affidavit of Harold Hall, Etc.

The affiant further states that on November 26, 1943 between the hours of 1:30 P. M. and 2:30 P. M., he served on the defendant Thomas Henry Robinson, Jr., at the direction and request of the United States Attorney for the Western District of Kentucky, a true and complete copy of all jurors who have been summoned to appear before the United States District Court for the Western District of Kentucky at Louisville on November 30, 1943.

Your affiant further avers that on Thursday, November 25, 1943, between the hours of 4:30 P. M. and 5:30 P. M., at the direction of the United States Attorney for the Western District of Kentucky, he served on Robert E. Hogan, counsel for Thomas Henry Robinson, Jr., by leaving at the office of said Hogan a true copy of the indictment pending in this district against the said Robinson, a complete list of the names and addresses of all witnesses who will appear at the direction of the Government to prove the said indictment, and a complete list of all jurors who have been summoned to appear on November 29, 1943.

The affiant further states that on November 26, 1943 between the hours of 1:30 P. M. and 2:30 P. M., he served on Robert E. Hogan by leaving at the office of said Hogan, at the direction and request of the United States Attorney for the Western District of Kentucky, a true and complete copy of all jurors who have been summoned to appear before the United States District Court for the Western District of Kentucky at Louisville on November 30, 1943.

Harold Hall,
Deputy U. S. Marshal.

Subscribed and sworn to before me this 27 day of November, 1943.

W. T. Beckham,
Clerk, U. S. District Court,
Western District of Kentucky.
H. W. Kresin,
Deputy Clerk.

ORDER FILING AFFIDAVIT OF HAROLD HALL, DEPUTY UNITED STATES MARSHAL AS TO SERVICE ON DEFENDANT AND COUNSEL OF LIST OF NAMES AND ADDRESSES OF UNITED STATES WITNESSES AND NAMES AND ADDRESSES OF ALL JURORS SUMMONED—Entered November 27, 1944.

Came the United States District Attorney and tendered the affidavit of Harold Hall, Deputy United States Marshal, as to service of list of witnesses and addresses, and names and addresses of all jurors summoned to appear before the United States District Court at Louisville, on November 29th and November 30, 1943, both as to the defendant in person and as to his counsel.

It is ordered that said affidavit be filed.

ORDER FOR TWO ADDITIONAL JURORS—Entered by Judge Shackelford Miller, Jr., November 29, 1943.

It appearing to the Court that this trial is likely to be a protracted one, it is

Ordered that two additional jurors be selected to serve as alternate jurors during the trial.

ORDER KEEPING JURY TOGETHER AT BROWN HOTEL, LOUISVILLE, KY.—Entered by Judge Shackelford Miller, Jr., November 29, 1943.

It appearing to the court that it is necessary in this case to keep the jury together, It Is Ordered that the jury be, during the adjournment hours of this trial, kept together at the Brown Hotel, in Louisville, Kentucky, and that all expenses, including lodging, meals and necessary expenses incident thereto for the members of the jury, for the two Deputy United States Marshals and the Special Bailiff, be paid by checks drawn on the Treasury of the United States of America by the United States Marshal of this court.

ORDER ADMINISTERING OATH TO DEPUTY MARSHALS AND SPECIAL BAILIFF IN CHARGE OF JURY—Entered by Judge Shackelford Miller, Jr., November 30, 1943.

Marion O. Cassady and Mrs. Bernadine Kearney, Deputy United States Marshals, and John Moorman, Special Bailiff, appeared in open court this day and took the following oath, which was administered by the Clerk of the Court:

“You, and each of you, do solemnly swear that as Deputy United States Marshals and Special Bailiff, you will wait upon and guard the Jury in this case, and do and perform every act necessary and proper in the efficient discharge of your duties as such, So Help You God.”

MOTION FOR DIRECTED VERDICT OF ACQUITTAL AND DISMISSAL.

Comes the defendant, Thomas Henry Robinson, Jr., by counsel and moves for a directed verdict of acquittal and dismissal of the indictment herein, because at the close of the Government's case it has wholly failed to prove the allegations charged against this defendant in said indictment.

Counsel for the Defendant.

Dec. 6, 1943.

MOTION TO STRIKE AND EXCLUDE GOVERNMENT EXHIBITS.

Comes the defendant, Thomas H. Robinson, Jr., and moves the Court for an order striking from the record and to exclude from the jury and their consideration the following Government Exhibits:

Exhibit 68—(2 sheets), later, at the suggestion of the court marked Exhibits 68-a and 68-b.

Exhibit 69—

Exhibit 33—Original Ransom Note.

Exhibit ———Outside of Envelope Containing the Original Ransom Note.

All original charts and all copies of charts and all photographs of charts, specimen photographs, and original negative of the outside of Envelope Containing the purported original ransom note.

Negative and impressions or specimens of photograph of the inside of Envelope in which was

Motion to Strike and Exclude Government Exhibits

contained the purported original ransom note.

Two photographs and all negatives of first page of purported original ransom note;

Original negative and all negative and specimen photographs of reverse side of first page of the purported original ransom note;

Two charts and all charts of Reverse side of first page of the purported original ransom note;

Two charts and all charts of the second page of the purported original ransom note;

Reverse side of second page of the purported original ransom note;

Chart No. 1—Enlargement of right thumb impression of one of the fingerprint cards;

Chart No. 1-a—Latent impression appearing on reverse side of first page of the original ransom letter.

Original and all copies of photographs and negatives of the right thumb, Government Exhibit No. 70.

Exhibit 70-a) Negatives of the outside of the envelope.
Exhibit 70-b)

Exhibit 71-a—The negatives of the outside of the envelope;

71-b—Inside of envelope;

71-c—The first page of the original ransom note;

71-d—Second page of the original ransom note;

71-e—Reverse of first page of ransom note;

71-f—Reverse of second page of original ransom note.

32 —Letter addressed to Berry V. Stoll;

30 —Envelope addressed to Miss Elizabeth McHenry;

48 —Envelope addressed to "The Custodian," etc., and a single sheet addressed to the "Custodian,"

Motion to Strike and Exclude Government Exhibits
signed in typewriter "Mr. Kennedy," etc.

47 —Envelope "Important, etc."—Pamphlet "How to Use Corona Portable, etc."

71-g;

71-h;

72-a—Letter from Mrs. Alice Stoll to Mr. Berry V. Stoll, in care of Mr. W. S. Speed;

72-b—With reference to the first page of the same letter, a chart, and the negative;

72-c—Negative of the above;

72-d {—With reference to the envelope of the same letter,
72-e { ter, an enlargement of the envelope and the
| negative;

72-f {—With reference to—

72-g { Inside of the envelope of the same letter, an
| enlargement;

72-h {—With reference to the first page of the same letter,
72-i { ter, an enlargement and the negative;

72-j {—With reference to the second page of the same
72-k { letter, an enlargement;

72-l {—With reference to the second page of the letter,
72-m { an enlargement and the negative;

73-a {—With reference to exhibits pertaining to the letter
73-b { ter from Mrs. Alice Stoll to Miss Elizabeth Mc-
| Henry, charts;

73-c {—With reference to the—

73-d { The envelope in which that same aforesaid letter
73-e { ter was contained, two enlargements and an-
73-f { other enlargement and the negative;

73-g {—With reference to the first page of the same letter
73-h { ter from Mrs. Stoll to Miss McHenry, enlarge-
| ment and the negative;

73-i* {—With reference to the reverse of the first page
73-j { of the letter from Mrs. Alice Stoll to Miss
| Elizabeth McHenry, the enlargement, and the
| negative;

Motion to Strike and Exclude Government Exhibits

- 73-k {—With reference to the second page of the letter
 73-l { from Mrs. Stoll to Miss Elizabeth McHenry,
 { enlargement and the negative;
- 73-m {—With reference to the second page of the let-
 73-n { ter from Mrs. Stoll to Miss Elizabeth McHenry,
 { enlargement and the negative;
- 74-a {—With reference to the testimony concerning the
 74-b { letter addressed to the Custodian, the envelope,
 { an enlargement and the negative;
- 74-c {—With reference to the inside of the envelope
 74-d { addressed to the Custodian, enlargement and
 { a negative;
- {—With reference to the front page of the letter
 74-d-e { addressed to the Custodian, enlargement as
 74-f } Government Exhibit 74-e (should it not read
 { (e)? and the negative, 74-f.
- 74-g {—With reference to the letter addressed to the
 74-h { Custodian, an enlargement and the negative;
- 75-a {—Two enlargements and a negative, with refer-
 75-b { ence to the envelope "Important . . . Read in-
 75-c { structions for operating in this envelope, L. C.
 { Smith and Corona Typewriter Company, Inc.
- 75-d {
 75-e {—With reference to the reverse side of the same
 75-f { above envelope, two enlargements and the nega-
 75-g { tive; and the charts of the same.
 75-b }

And to strike from and exclude from the jury any and all other exhibits to which said Knowles referred; and to strike and exclude from the jury all of said testimony of said witness Knowles; and to strike from the evidence and to exclude from the jury exhibits 68-a, 68-b, and 69, and the testimony of witness Richard E. Smith,—

Because the testimony of witness Knowles and the filing of the aforesaid exhibits and all such exhibits as witnesses Richard E. Smith and John P. Knowles referred

Motion to Strike and Exclude Government Exhibits

to was made contingent upon and subject to witness Knowles connecting up and identifying the known specimens of fingerprints with those appearing on certain exhibits which had tentatively and conditionally been filed by the United States as Government Exhibits; and because witness John P. Knowles failed to so connect them up or properly identify them, because he testified the fingerprints on those exhibits and documents could have been made by no other person than Thomas H. Robinson or that they were made by Thomas H. Robinson (a person other than this defendant, Thomas Henry Robinson, Jr.), and because this erroneous identity is important as a ground of objection inasmuch as Thomas Henry Robinson, Jr., and Thomas Henry Robinson, Sr., are distinct and separate persons named in the indictment in this case; and because Thomas Henry Robinson, now deceased, was tried on this said indictment and acquitted.

Counsel for the defendant Thomas
Henry Robinson, Jr.

Dec. 6, 1943.

**MOTION FOR DIRECTED VERDICT OF ACQUITTAL
AND DISMISSAL AT CLOSE OF ENTIRE CASE.**

Comes the defendant, Thomas Henry Robinson, Jr., by counsel, and at the close of the entire case, moves for a directed verdict of acquittal and dismissal of the indictment herein, because at the close of the entire case, the plaintiff has wholly failed to prove the allegations contained in said indictment against this defendant.

Counsel for the Defendant

Dec. 11, 1943.

TRIAL ORDER AND VERDICT OF JURY—Entered by
Judge Shapelford Miller, Jr., December 11, 1943.

Pursuant to a prior setting of this case for trial, it came on to be heard before the Court and Jury on November 29, 1943, the United States appearing by Eli H. Brown, III, United States Attorney, and J. D. Inman, Assistant United States Attorney, on behalf of the United States, and the defendant in his own person and by counsel, Robert E. Hogan. Both sides announced ready. Eleven jurors having been selected and the hour of adjournment having arrived, the jury was duly admonished and placed in the custody of the Deputy United States Marshal, and Court was adjourned until November 30, 1943, at 9:30 A. M.

On November 30, 1943, at 9:30 A. M., came all the parties hereinbefore mentioned; the selection of the jury was completed, being composed of the following persons:

Joseph C. Powers
J. Lawrence Abell
Hugh Beaven
Joseph J. Edelen
Mrs. Elizabeth F. Davidson
Robert Goff

William H. Thornberry
Will Lee Mattingly
J. Wilson Green
Earl W. Ackerman
E. E. Hardin
Mrs. Gladys Elswick

The said jurors were impaneled and sworn to try the case and a true verdict render according to the law and the evidence. It was agreed between counsel, without waiving the right to question the constitutionality of the statute, that the case be tried with one alternate juror and C. E. Miller was selected and sworn and seated adjacent to the jury box. The District Court then instructed Deputy Marshals Marion O. Cassady and Mrs. Bernadine Kearney and Special Bailiff, John Moremen to well and truly guard the jury, and further directed them not to allow the said jury or any member of said jury to read, see or have access to any newspaper, magazine or other periodical containing or purporting to contain any account of said trial. Said Deputy Marshals and Special Bailiff were duly sworn by the Clerk of the Court to well and truly guard the jury and keep them in custody and together in space allotted and set apart for them at all times that the court was not in session.

Trial Order and Verdict of Jury

The opening statement for the United States was made by J. D. Inman, Assistant United States Attorney and at the conclusion of said statement, counsel for the defendant, Robert E. Hogan, reserved his opening statement and declined to make any at that time. Thereupon the introduction of evidence on behalf of the United States to prove the indictment was started. The hour of adjournment having arrived, the jury was duly admonished according to law and the court adjourned to 9:30 A. M., December 1, 1943.

On December 1, 1943, the Court reconvened, all parties were present, and evidence of the United States was resumed. At the hour of adjournment the Court admonished the jury and the case was continued to December 2, 1943, at 9:30 A. M.

On December 2, 1943, at 9:30 A. M., the Court reconvened, the United States being present by counsel and the defendant being present in person and by counsel, and the evidence on behalf of the United States was resumed. At the hour of adjournment, the jury was duly admonished and court was adjourned to December 3, 1943, at 9:30 A. M.

On December 3, 1943, at 9:30 A. M., all parties being present, court was again convened and the evidence for the United States was resumed. At the hour of adjournment the jury was admonished and the case was continued for hearing until December 4, 1943, at 9:30 A. M.

On December 4, 1943, the court convened at 9:30 A. M., all parties being present, and evidence for the United States was resumed. At 12:45 P. M., the Jury was duly admonished and court was adjourned until Monday, December 6, 1943, at 9:30 A. M.

On December 6, 1943, at 9:30 A. M., all parties being present, the court reconvened. The United States Attorney announced that the Government rested, all evidence of the United States having been completed. Thereupon the defendant by counsel, tendered motion to strike and to exclude certain exhibits theretofore introduced on behalf of the United States, which motion was ordered filed and ruling reserved thereon. Whereupon the defendant by counsel, tendered motion for directed verdict, which mo-

Trial Order and Verdict of Jury

tion was ordered filed and overruled by the Court with exception to the defendant. Evidence for the defendant was begun and at 4:15 P. M., the jury was duly admonished and excused until December 7, 1943, at 9:30 A. M.

On December 7, 1943, at 9:30 A. M., all parties being present, the court again convened and evidence on behalf of the defendant was resumed. At the hour of adjournment the jury was duly admonished and the case was continued to December 8, 1943, at 9:30 A. M.

On December 8, 1943, at 9:30 A. M., the case was called for trial, all parties being present, and a report was made to the Court of the illness of two of the jurors. Thereupon the court was recessed until 2:30 P. M., December 8, 1943. At 2:30 P. M., December 8, 1943, court reconvened, all regular jurors being present with the exception of Mrs. Elizabeth F. Davidson. A report was made to the Court that the illness of Mrs. Davidson made it impossible for her to be present and it was doubtful whether she would be able to resume her place in the jury box on December 9, 1943. Thereupon Mrs. Elizabeth F. Davidson, a juror on the regular panel, was excused and C. E. Miller, alternate juror, was directed by the Court to take the place of Mrs. Elizabeth F. Davidson on the regular jury. Mrs. Elizabeth F. Davidson was finally discharged by the Court. Evidence for the defendant was resumed.

The defendant, by counsel, tendered a motion for personal attendance of Dr. H. B. Brackin, fees and expenses to be paid by the United States, together with affidavit of the defendant in support thereof, which motion and affidavit were filed and sustained by the Court. The hour of adjournment having arrived, the jury was duly admonished and the case was continued to December 9, 1943, at 9:30 A. M.

On December 9, 1943, at 9:30 A. M., all parties being present, court was reconvened and evidence on behalf of the defendant was resumed. At 9:30 P. M., the jury was duly admonished and court was adjourned until December 10, 1943, at 9:30 A. M., at which time the court reconvened, all parties being present, and evidence for the defendant resumed and concluded. Thereupon the United States

Trial Order and Verdict of Jury

Attorney announced that he desired to present certain rebuttal evidence. Hearing of rebuttal evidence was begun and concluded, and the hour of adjournment having arrived, the jury was duly admonished and court was adjourned until December 11, 1943, at 9:30 A. M.

On December 11, 1943, at 9:30 A. M., all parties being present, court was reconvened and evidence for the defendant in surrebuttal was heard and concluded. Both sides by counsel, announced that they had no further evidence to offer. Whereupon the defendant's tendered motion to strike and exclude certain government exhibits was again made, was overruled by the Court with exception to the defendant. The defendant, by counsel tendered motion for directed verdict of acquittal, and dismissal, which motion was filed and overruled by the Court, exceptions granted to the defendant.

A conference was held out of the presence of the jury in the chambers of the Court, Eli H. Brown, III, United States Attorney, being present and Robert E. Hogan, counsel for the defendant, being present. Counsel for the United States tendered two requested charges to be made by the Court to the jury; counsel for the defendant requested twenty-two charges to be given by the Court to the jury. The suggested charges, both on behalf of the United States and on behalf of the defendant, were ordered filed.

The opening argument on behalf of the United States was made by J. D. Inman, Assistant United States Attorney. The argument on behalf of the defendant, Thomas Henry Robinson, Jr., was made by counsel for the defendant, Robert E. Hogan, and the closing argument on behalf of the United States was given by Eli H. Brown, III, United States Attorney. Thereupon, the customary hour for evening meal having arrived, court was recessed until 7:30 P. M., December 11, 1943. At 7:30 P. M., on December 11, 1943, the court reconvened, the jury was duly instructed by the Court, and by agreement with counsel three written forms of verdict were submitted to the jury. The jury thereupon retired to consider the case. At 11:15 P. M., after an absence of approximately two hours and one-half, the jury returned into open court and informed the Court

Trial Order and Verdict of Jury

that they had made a verdict. Whereupon the Foreman of the jury read the verdict of the jury and then handed it to the Clerk; and then it was handed to the Judge who examined it and found it to be in proper form and returned it to the Clerk to become a part of the permanent files of his office.

The verdict of the jury returned at 11:15 P. M., on December 11, 1943, read as follows:

"We, the jury, find the defendant, Thomas Henry Robinson, Jr., guilty, and recommend punishment by death."

Signed, "Will Lee Mattingly,
Foreman."

December 11, 1943.

Whereupon counsel for the defendant was requested whether he desired a polling of the jury, and on the Court's own motion each juror was asked individually if the verdict read in open court by the Foreman was his own verdict, and the answer of each of the twelve jurors was "Yes."

Whereupon by agreement the cause was passed to December 13, 1943, at 10:00 A. M. for the sentencing of the defendant Thomas Henry Robinson, Jr., and court was adjourned and the jury discharged.

MOTION IN ARREST OF JUDGMENT.

Now comes Thomas Henry Robinson, Jr., defendant herein, and moves that the verdict of guilty returned against him by a jury in this court upon the 11th day of December, 1943, be arrested and no judgment or sentence be imposed thereon for the following reasons:

(1) That the indictment upon which the defendant was tried and convicted does not state facts sufficient to constitute a crime against the United States.

(2) The indictment does not contain such a statement of the facts and circumstances as to inform the accused, this defendant, of the specific acts with which he is charged.

(3) The indictment upon which this defendant was tried alleges, in the language of the statute, that this defendant knowingly transported in interstate commerce a person who had been unlawfully kidnaped and held for ransom, to-wit, Mrs. Alice Stoll, and that this defendant "did not liberate her unharmed"; but such bare, naked allegation, does not meet the requirement that an indictment must fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; nor does the indictment meet the further requirement that a crime must be charged with precision and certainty and every ingredient of which it is composed must be accurately and clearly alleged.

(4) The indictment upon which this defendant was tried is not free from ambiguity, and leaves doubt in the mind of this accused of the exact offense intended to be charged, and does not apprise this defendant what he is called upon to meet.

(5) The indictment upon which this defendant was tried, although alleging that Mrs. Alice was not released unharmed, does not allege or charge any specific physical or bodily injuries or harms, and this defendant did not know, and could not know, what to expect or what defense he would be called upon to make to such a bare, naked, unexplained allegation; because such allegation could have meant Mrs. Alice Stoll was injured or harmed in any

Motion in Arrest of Judgment

number of ways or to any number of extents or degrees, and such allegation was, and is, susceptible of any number of meanings and interpretations, and is not clear or specific.

(6) That the offense charged and alleged in said indictment is duplicitous.

(7) That the indictment upon which this defendant was tried was, and is, wholly lacking in accurate and clear allegations and does not, and did not, warrant or permit the introduction of any evidence to sustain the allegation that Mrs. Alice Stoll was not liberated unharmed.

Counsel for Defendant,
Thomas Henry Robinson, Jr.

MOTION AND GROUNDS FOR NEW TRIAL.

Comes now the defendant, Thomas H. Robinson, Jr., in person and by counsel, and moves the court to vacate the verdict of the jury, the judgment entered thereon, and sentence imposed herein, and to grant to this defendant a new trial, upon the following grounds:

1. The verdict of the jury is contrary to the weight of the evidence, and is contrary to law.

2. Because the verdict was, and is, one of an impassioned and prejudiced jury.

3. Because of false and untrue testimony of witnesses E. M. Allen and Mr. and Mrs. Palmer concerning the existence, or non-existence, of tourist camp facilities at Beechwood Inn or Beech Grove Inn.

4. Because of the Court's refusal to permit witness Ivan Carlise to fully rebut the testimony of witnesses E. M. Allen and Mr. and Mrs. Palmer concerning said tourist camp facilities.

Motion and Grounds for New Trial

5. Because the court erred in excluding testimony of witness W. K. Powell, to which defendant at the time excepted, and still excepts, and made an avowal.

6. Because the Court erred in excluding testimony of witnesses Joseph Hayse and Nellie Stoess Hayse to contradict and impeach the testimony of witness Ann Woollet, to which defendant at the time excepted, and still excepts.

7. To error of the Court in refusing to permit a prior statement or statements of witness Ann Woollet to be read to contradict and impeach her.

8. To error of the Court in allowing Ann Woollet and Fowler Woollet to invoke the privilege of refusing to allow their previous statements to be read to contradict and impeach their testimony, on the ground that when they had given such statements the relationship of attorney and client existed between them and Joseph Hayse.

9. Error in instructions given by the Court and in refusing to give offered instructions of the defendant.

10. Error of the Court in commenting upon the testimony of Doctors Solomon and Crice and in telling the jury they were not members of any lunacy commission of Jefferson County because no such commission was found to be provided for by the Kentucky Statutes, as such comment tended to, and did, sway the jury and tended to, and did, cause them to disregard the testimony of those two said physicians, and to destroy this defendant's defense of insanity.

11. Error of the Court in commenting upon the testimony of witness Alvin Kirtley, as that had a swaying and prejudicial effect upon the jury and its verdict.

12. Error of the Court in commenting upon, and unduly stressing, that this defendant had written that he was the kidnaper of Alice Stoll, which comment tended to, and did, completely destroy this defendant's defense that Mrs. Alice Stoll went willingly, and swayed the jury prejudicially against this defendant.

13. Error of the Court in commenting upon, and unduly and impassionately stressing to the jury the questioned fact as to whether or not Mrs. Alice Stoll had a cut on her head at the time she was released, causing said jury

Motion and Grounds for New Trial

to be prejudiced and impassioned against this defendant and causing said jury to recommend the imposition of the death penalty upon this defendant, without which said comment said jury would not have so recommended the imposition of the death penalty upon this defendant.

14. Because of error of the Court in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the Government's case; and error of the Court in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the case for both sides.

15. Error of the Court in overruling defendant's objection to the introduction of testimony upon the condition of Mrs. Alice Stoll at the time of her release and permitting such testimony to be introduced, to which defendant at the time excepted and still excepts, which said testimony erroneously permitted and enabled the jury to recommend the imposition of the death penalty, and without which they could not have so recommended, all of which highly and greatly prejudiced this defendant and his substantial rights.

16. The Court erred in overruling defendant's motion to strike all of the testimony of witness Knowles, the Government's fingerprint expert, and all the exhibits introduced or sought to be introduced by him, because said witness Knowles said the questioned fingerprints which he compared with genuine fingerprints could have been made by no other person than Thomas H. Robinson, a person other than this defendant; to which the defendant excepted at the time, and still excepts.

17. Error in refusing offered testimony of this defendant, to which defendant at the time excepted, and still excepts.

18. Error in permitting the United States of America to introduce testimony offered by it, to which defendant at the time excepted, and still excepts.

19. The proof fails to show that Alice Speed Stoll was held for ransom or reward, or that any ransom or reward was ever actually delivered to this defendant.

20. The testimony which tends to connect this defendant with the commission of the offense charged in the in-

Motion and Grounds for New Trial

dietment was, and is, insufficient to warrant submitting this case to the jury under this indictment.

21. The trial court erred in pronouncing judgment against this defendant.

22. Error of the court in permitting the jurors to have access to, and to read, newspaper accounts of the trial of this defendant, which said newspaper accounts were highly prejudicial against this defendant and impassioned the jurors against this defendant.

23. The Court erred in ruling that this was a capital case, and instructing the jury accordingly, and in permitting said jury to recommend the imposition of the death penalty.

24. Error of the Court in instructing the jury that they may recommend a death penalty, because this was not, and is not a capital case, and there was a complete lack of any evidence that at the time of the verdict of the jury or at the time of imposition of the sentence, said Mrs. Alice Stoll was in a harmed condition; because she testified during the trial of this action and neither she nor any other witness said or presumed to say that during this trial of this defendant she was in a harmed, disabled, hurt, infirm, or impaired physical condition from any injuries inflicted upon her at any time, or between October 10, 1934 and October 16, 1934, by this defendant; and because the statute in question forbids the imposition of the death penalty or the recommendation of the death penalty by the jury if at the time of imposition of sentence of the defendant the alleged victim is produced in an otherwise than harmed condition or at such time shown to be in an otherwise than harmed condition.

25. Because the indictment in this cause is defective, and duplicitous, and does not contain facts or allegations sufficient to constitute an offense against the United States of America, or to charge this defendant with the commission of any offense against the United States of America.

26. Because the Court erroneously permitted evidence of prior crimes and indictments to be introduced against this defendant, to which defendant excepted at the time and still excepts.

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27. Because the Court erroneously permitted evidence of lay witnesses to establish that this defendant knew right from wrong, to which this defendant objected and excepted at the time, and still excepts.

28. Because the Court erroneously permitted a letter to be read which this defendant had written while illegally being held in Leavenworth Penitentiary, which was written prior to this defendant's arraignment, to which this defendant objected and excepted, and still excepts.

Defendant says that each and all of the aforesaid grounds for new trial materially and substantially affected and do now so affect his substantial rights.

Wherefore: The premises considered, the defendant, Thomas Henry Robinson, Jr., respectfully prays as follows:

1. That this court permit this defendant to file this, his motion and grounds for new trial, and that the Court fix a time, not sooner than 10 days hence, for a hearing on said motion.

2. That this court grant to this defendant a new trial, and that the verdict of the jury and the judgment rendered thereon be set aside, and this defendant be granted a reasonable time in which to file additional grounds for a new trial.

Defendant Pro Se.

Counsel for Defendant.

Notice of filing accepted:

United States District Attorney.
Counsel for the United States of
America.

JUDGMENT AND SENTENCE—Entered and Imposed by
Judge Shackelford Miller, Jr., December 13, 1943.

Whereas at the October 1943 term of the United States District Court for the Western District of Kentucky held at Louisville, Kentucky, to-wit: Beginning on November 29, 1943, and each day thereafter, with the exception of Sunday, December 5, 1943, to and including December 11, 1943, Thomas Henry Robinson, Jr., was tried before the Court and jury duly impaneled and sworn in said Court in the above-styled case and numbered cause, and said jury returned the following verdict, to-wit:

“Verdict, In the District Court of the United States for the Western District of Kentucky, Louisville Division, United States of America vs. Thomas Henry Robinson, Jr. We, the jury, find the defendant, Thomas Henry Robinson, Jr. guilty and recommend punishment by death.

Will Lee Mattingly, Foreman,”

and thereupon said cause was continued by agreement for the sentencing of the said Thomas Henry Robinson Jr. at Louisville, Kentucky, on December 13, 1943.

Now on this 13th day of December, 1943, at Louisville, Kentucky, comes the defendant, Thomas Henry Robinson Jr., in person in open Court and by Robert E. Hogan, his attorney, and the United States of America by Eli H. Brown III, United States Attorney; thereupon the defendant in person and by counsel filed a motion in arrest of judgment, the same having been considered, be and is hereby overruled, to which the defendant excepted and still excepts, and which exception is allowed by the Court; and leave of Court having been had and obtained, the defendant, Thomas Henry Robinson Jr., in person and by counsel, filed his motion for a new trial; and said motion having been duly presented to the Court and argument had thereon, it is hereby ordered that said motion be and the same is hereby overruled; to which the defendant, Thomas Henry Robinson, Jr., excepted, and still excepts, and which exception is allowed by the Court.

Judgment and Sentence

Thereupon, Eli H. Brown III, United States Attorney, asked the judgment and sentence of the Court upon the said Thomas Henry Robinson Jr. in accordance with the verdict of the jury herein, and recommended to the Court that the sentence of death be imposed.

And it being demanded by the Court of the said defendant, Thomas Henry Robinson Jr., in person and by his counsel, Robert E. Hogan, whether he or either of them had anything to say why sentence should not be now pronounced against the said Thomas Henry Robinson Jr., and the defendant, Thomas Henry Robinson Jr., and his counsel, Robert E. Hogan, gave no legal reason further than has heretofore been given.

Whereupon, the premises being seen and by the Court well and sufficiently understood, it is now by the Court hereby considered, ordered and adjudged that the said defendant, Thomas Henry Robinson Jr., for the crime by him committed, and upon the verdict of the jury in this cause, during the hours of Friday, March 10, 1944, at the State Penal Institution in Eddyville, Kentucky, in the Western District of Kentucky, be by the United States Marshal for the Western District of Kentucky executed by causing to pass through the body of the defendant, Thomas Henry Robinson Jr., a current of electricity of sufficient intensity to cause death as quickly as possible. The application of the current to be continued until Thomas Henry Robinson Jr. is dead. The said sentence of death to be carried out in the manner and form as provided by the Statutes of the United States of America, in conformity and in compliance with the statute law of the Commonwealth of Kentucky.

It is further ordered and adjudged that the defendant, Thomas Henry Robinson Jr. be remanded to the custody of the United States Marshal for the Western District of Kentucky, and by him to be held in Jefferson County jail at Louisville, Kentucky, for a period not less than six (6) days pending further orders of this Court as to the place to which he shall be committed pending the execution of this judgment.

**ADDITIONAL GROUNDS IN SUPPORT OF MOTION
FOR NEW TRIAL**—Filed December 14, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., by counsel, and with leave of court, and for additional grounds in support of his motion for a new trial, states:

29. The judgment and sentence imposed is too harsh and wholly out of proportion to anything proven against this defendant.

30. Because the jury's verdict was, and is, the result of passion and prejudice engendered in their minds by reason of the alleged smearing by this defendant of Mrs. Alice Stoll and of some two or three other women in Tennessee, when in truth and in fact smearing is not alleged in the indictment and the jury's verdict, influenced as it was, by what the defendant said of his relationship with Mrs. Alice Stoll, and influenced as it was, by the determined efforts on the part of the Government to show that he smeared other women—was a verdict of an impassioned and prejudiced jury, and a verdict of what the defendant said of or about Mrs. Alice Stoll rather than what he did to her, or what he did as alleged in the indictment; that the jury's verdict of guilty and their recommendation that the death penalty be imposed, was impassioned and influenced by what this defendant said of Mrs. Alice Stoll and what he is alleged to have done to other women, rather than what he did as charged in the indictment. In other words, the jury convicted him of slander and smearing when in truth and in fact the indictment upon which he was tried contains no allegations of slander or smearing.

31. Because the Court in accepting the recommendation of the jury that the death penalty be imposed, and imposing the death penalty upon this defendant, did so because, and as the Court openly stated in court, he believed that the matters and things said by this defendant of his relationship with Mrs. Alice Stoll were untrue, and that if this defendant had not made such alleged untrue statements of and concerning Mrs. Alice Stoll, the Court would not have accepted the recommendation of the jury and would not have imposed the death penalty. But, the

Additional Grounds in Support of Motion, Etc.

Court in so doing imposed the death penalty upon alleged slanderous and untrue statements made allegedly by this defendant against Mrs. Alice Stoll, where as in truth and in fact slander is not alleged in the indictment, and the Court had no right to impose the death penalty upon this defendant because of what the defendant said or may have said rather than what he did pursuant to the allegations in the indictment.

32. Because slander or smearing words constitute no part of the allegations of the indictment and slander or untruth is not punishable by death.

33. Because the Court was biased and prejudiced and influenced and impassioned the jury to render a verdict of guilty and to recommend the imposition of the death penalty.

34. Because the jury and the Court failed to consider, as mitigating circumstances, the fact that this defendant had been illegally punished and confined in penitentiaries in violation of his constitutional and legal rights for a period of seven and one-half years.

35. Because the Court commented unfavorably upon certain of defendant's evidence and testimony, to-wit: commented that this defendant had written a letter to "Dear Mr. Intermediary" in which it was stated that this defendant was the kidnaper of Mrs. Alice Stoll, and the Court very pointedly brought out to the jury that that letter was an admission of the disputed fact of whether this defendant kidnapped Mrs. Alice Stoll or whether she went with him—one of the main points in issue; and further commented that in this letter this defendant had stated that Mrs. Alice Stoll had a slight cut upon her head which had partially healed, the Court commenting that that was an admission that this defendant had inflicted upon the victim an injury. That emphasized impassionedly to the jury the infliction of injury upon the victim, but the Court did not comment upon a letter that had been written to Miss McHenry in which it was stated that the injury had completely healed, the comment of the Court being unfair in failing to show that if there had been a cut on the victim's head it had healed.

Additional Grounds in Support of Motion, Etc.

36. Because the court refused to comment that the Government had deliberately attempted to obstruct justice by taking a statement from the witness Ivan Carlisle to the effect that he was the owner of Beechwood Inn or Beech Grove Tourist Camp during the Summer of 1931, and that at this camp were facilities which were and could be rented to tourists and others registering as tourists, and refused to comment to the jury that the F. B. I. had held this witness a virtual prisoner in its office and that the Government had refused to put him on the stand and let him divulge the truth about the existence of the tourist camp in question, and its accommodations, inasmuch as the Court, by its own admission, was influenced to impose the death penalty because it believed the defendant had told an untruth about the existence of the aforesaid tourist camp and facilities.

37. Because the Court failed to comment upon the Government's failure to produce finger print evidence to show that this defendant had ever had his hands upon the pipe with which it was claimed this defendant struck Mrs. Stoll.

38. Because the Court failed to comment upon the Government's failure to produce finger-print evidence of this defendant upon many exhibits and documents—witness Knowles admitting that the finger prints found upon those exhibits and documents could have been made by no other person than Thomas H. Robinson, a person other than this defendant, Thomas H. Robinson, Jr.

39. Because the Court failed to comment upon the complete lack of chemical or other analysis of blood that was claimed to have been produced when this defendant allegedly struck Mrs. Stoll with the alleged iron pipe.

40. Because the Court failed to comment upon the failure of the Government to produce the bed spread or coat or other articles upon it was claimed Mrs. Stoll's blood was spilled as the result of being struck by the alleged pipe.

41. Because the Court unfavorably and impassionedly commented upon the evidence of and against the defendant, and did not comment upon any evidence of the Government or the failure to produce evidence by the Government on

Additional Grounds in Support of Motion, Etc.

certain issues, or the fact that the Government had deliberately suppressed evidence.

Defendant says that each of the aforesaid additional grounds for a new trial materially and substantially affected, and do now so affect this defendant's substantial rights, all to his prejudice.

Wherefore, the premises considered, the defendant, Thomas Henry Robinson, Jr., respectfully prays as in his original motion and grounds for a new trial, and that the Court permit him to file this his additional grounds for a new trial, and that the Court grant him a new trial, and that the verdict of the jury and the judgment rendered, and sentence imposed thereon, to be set aside and held for naught.

Robert E. Hogan,
Counsel for the Defendant.

Notice of filing accepted:

Eli H. Brown III,
United States District Attorney.
Dec. 14, 1943.

AFFIDAVIT OF THOMAS HENRY ROBINSON, JR.

—Filed December 14, 1943.

State of Kentucky, }
 County of Jefferson, } ss.

Thomas Henry Robinson, Jr., being first duly sworn, deposes and says:

That he is the Relator named in the foregoing Application for Leave to Proceed in Forma Pauperis on Appeal, and that he is a citizen of the United States by birth;

That in seeking to take, and in taking, said Appeal, as well as in submitting the foregoing Application, he is using the utmost good faith;

That he believes he has a meritorious cause of action and appeal and is entitled to the redress he seeks;

That because of his poverty, he is unable to pay the costs of said Appeal, or to give security for the same;

That except for the postage and the \$5.00 filing fee for the Notice of Appeal, he is otherwise a pauper, and he has no real or personal property in any way conveyed or concealed, or in any way disposed of, for his future use or benefit.

That as evidence of good faith, he herewith tenders the sum of \$5.00 to cover the cost of filing the Notice of Appeal;

That he claims no exemption and is willing to turn over the remainder of his funds to the Court for payment of such further costs as said funds will cover.

/s/ Thomas Henry Robinson, Jr.,
 Affiant and Relator-Appellant.

Subscribed and sworn to before me this 13 day of December, 1943, by Thomas Henry Robinson, Jr.

My commission expires September 8, 1946.

/s/ Robert E. Hogan,
 Notary Public, Jefferson County, Ky.

**APPLICATION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS ON APPEAL**—Filed December 14, 1943.

To The Honorable Shackelford Miller, Jr., Judge of the above entitled Court, or to any other judge thereof:

Thomas Henry Robinson, Jr., the relator herein, respectfully shows:

That on the 11th day of December, 1943, a verdict of guilty was returned herein, upon which judgment was subsequently entered and sentence subsequently imposed, and that in the above entitled cause certain manifest errors have intervened to the great prejudice and damage of the said Relator, who, conceiving himself aggrieved thereby, desires to appeal to the United States Circuit Court of Appeals for the Sixth Circuit;

That by virtue of the facts set forth in the accompanying affidavit in Forma Pauperis filed herewith, said Relator is unable to pay the costs of said Appeal or to give security for the same, and he believes that he is entitled to the redress he seeks.

Wherefore, the said Relator prays for leave to proceed in forma pauperis on the appeal, as provided for under the United States Code, Title 28, Section 832; and he also prays for such other and further orders and processes as may cause all and singular the records, papers, exhibits, including a Bill of Exceptions, and proceedings in said cause to be sent to the United States Circuit Court of Appeals for the Sixth Circuit, under and according to the law of the United States in that behalf made and provided, so that the same may be inspected and the Judges of said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to law ought to be done.

And your Relator will ever pray.

Dated this 13th day of December.

Thomas Henry Robinson, Jr.,

Notice Accepted:

Relator,—Appellant Pro Se.

Eli H. Brown, III,

United States District Attorney.

Dec. 14, 1943.

**ORDER FILING DEFENDANT'S ADDITIONAL
GROUNDS IN SUPPORT OF MOTION FOR NEW
TRIAL, AND APPLICATION TO PROCEED IN
FORMA PAUPERIS**—Entered by Judge Shackelford
Miller, Jr., December 14, 1943.

Came the defendant by counsel and tendered Additional Grounds in Support of Motion for New Trial, which is ordered filed.

Defendant, by counsel, also tendered Application for leave to Proceed in Forma Pauperis in his Appeal to the United States Circuit Court of Appeals for the Sixth Circuit and defendant's supporting affidavit, both of which papers are ordered to be filed.

**RESPONSE OF THE UNITED STATES OF AMERICA
TO CERTAIN PORTIONS OF THE MOTION AND
GROUNDS FOR NEW TRIAL FILED ON DECEMBER
13, 1943 AND TO CERTAIN POINTS CON-
TAINED IN THE ADDITIONAL MOTION AND
GROUNDS FOR NEW TRIAL FILED ON DECEMBER
16, 1943**—Filed December 16, 1943.

Comes the United States of America by counsel, and for response to Paragraph No. 3 and Paragraph No. 22 in the motion and grounds for new trial, and for response to Paragraph No. 36 contained in the additional grounds in support of motion for new trial, states:

It is expressly denied that E. M. Allen and E. S. Palmer and Mrs. E. S. Palmer testified falsely from the witness stand when subpoenaed to appear as witnesses on behalf of the United States on the trial of the above cause, and it is expressly stated that E. M. Allen and E. S. Palmer and Mrs. E. S. Palmer testified fully and exactly as to all facilities contained on the premises known as the Beech

Response of the United States of America, Etc.

Wood Inn and later known as the Beech Grove Tourist Camp. It is further stated that E. M. Allen was not even cross-examined by counsel for the defendant Thomas Henry Robinson, Jr.

With reference to Paragraph No. 22, it is expressly denied that at any time the jury or any member of the jury was permitted to have access to or to read any newspaper account of the trial of Thomas Henry Robinson, Jr., and it is expressly denied that said newspaper accounts were highly prejudicial and impassioned, and it is further stated expressly that the newspaper accounts correctly and impartially disclosed the facts.

For further response, it is stated that at the time of the swearing of the jury Deputy United States Marshals and the special bailiff to safeguard the jury, the said Deputy United States Marshals and special bailiff were expressly warned and cautioned by the District Judge not to allow at any time any member of the jury to see any paper, magazine or other periodical containing any account of the said trial. It is further stated expressly that the District Judge at the time of the selection of the jury warned the jury not to discuss or allow anyone to discuss with them any phase, fact or matter pertaining to the trial of United States versus Thomas Henry Robinson, Jr.

There is attached hereto and made a part hereof, marked "Exhibit A," the affidavit of Marion O. Cassady, Deputy United States Marshal in charge of all arrangements for safeguarding and protecting the jury; there is attached hereto and made a part hereof, marked "Exhibit B," the affidavit of Mrs. Bernadine Kearney, Deputy United States Marshal, who was sworn to safeguard and protect the jury; there is attached hereto and made a part hereof, marked "Exhibit C," the affidavit of John Moorman, who was a special bailiff, who was sworn to safeguard and protect the jury, wherein all three affidavits expressly state that at no time was any juror allowed to nor did any juror see any newspaper, magazine or other periodical wherein was contained any reference to the trial of United States versus Thomas Henry Robinson, Jr.

Response of the United States of America, Etc.

For further response, the United States by counsel expressly denies that the judgment and sentence recommended by the jury and imposed by the court was too harsh or out of proportion to the crime proven by the evidence introduced on the trial of the case. It is expressly denied that the jury verdict was the result of passion and prejudice. It is expressly denied that the Court was biased or prejudiced or influenced or attempted to influence in any way the jury to return a verdict of guilty with the recommendation that the sentence of death be imposed. It is expressly denied that the Court commented unfairly on the evidence or any portion of the evidence introduced on behalf of the United States and on behalf of the defendant on the trial of the above-styled case.

With reference to Paragraph No. 36 in additional motion and grounds for new trial, it is expressly denied that the Court refused to comment "that the Government had deliberately attempted to obstruct justice by taking a statement from the witness Ivan Carlisle," and it is stated that at no time was any request made to the Court to comment on this evidence or any other evidence, and it is further stated that out of 22 requests to charge submitted to the Court by the defendant in person and by counsel, Robert E. Hogan, that the court delivered 21 out of the 22 requests.

It is expressly denied that the Government attempted to or did in fact obstruct justice in any manner or degree whatsoever with reference to any testimony of Ivan Carlisle.

It is expressly denied that the witness Ivan Carlisle was held by the Federal Bureau of Investigation or by any employee of the United States Attorney's office a prisoner in its office, and it is stated affirmatively that Ivan Carlisle was subpoenaed to appear as a witness on behalf of the United States exactly as were some 120 other persons subpoenaed to appear as witnesses; that these witnesses on motion of the defendant were excluded from the court room; that it was necessary to provide accommodations in space that was too crowded to accommodate this large number of witnesses; that seats and chairs were arranged for these witnesses not only near the court room but also

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in the offices of the United States Attorney and in certain of the offices assigned to the Federal Bureau of Investigation.

It is further affirmatively stated that at no time was the witness Ivan Carlisle or any other witness intimidated, interfered with, threatened or held a prisoner. It is further stated that Ivan Carlisle appeared in response to a subpoena in the office of the United States Attorney on December 9, 1943; that at that time he was registered in by the clerk-stenographer in the office of the United States Attorney; that at the end of the day's session he and other witnesses were discharged and told to return at 9.00 A. M. on Friday, December 10, 1943; that he and other witnesses returned at the hour indicated and remained in attendance on the court until 5.00 P. M. on December 10, 1943, at which time the said witness Ivan Carlisle and other Government witnesses were released and were discharged on the authority of the United States Attorney and were duly paid by the United States Marshal for their traveling expenses and their witness fees.

There is attached hereto and made a part hereof, marked "Exhibit D," the affidavit of Ida Robinson, a clerk-stenographer in the office of the United States Attorney and the one charged with the duty of registering witnesses in and checking them out on their release by the United States Attorney.

There is attached hereto and made a part hereof, marked "Exhibit E," the affidavit of John G. Faulkner, Jr., Special Agent of the Federal Bureau of Investigation.

There is attached hereto and made a part hereof, marked "Exhibit F," the affidavit of James C. Bulman, Special Agent of the Federal Bureau of Investigation.

It is further expressly denied that at any time did the Government or the United States Attorney on behalf of the Government do anything other than to see that the defendant Thomas Henry Robinson, Jr. was afforded a fair and impartial trial, and it is expressly denied that the United States Attorney or any agent of the Federal Bureau of Investigation or any other Government agent did anything to impassion the jury, to suppress evidence or attempt in

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any way to see that the defendant Thomas Henry Robinson, Jr. was afforded other than a fair and impartial trial for the crime for which he was indicted.

Eli H. Brown, III,
United States Attorney.

December 16, 1943.

AFFIDAVIT OF MARION O. CASSADY.

Comes your affiant, Marion O. Cassady, and states that he is the duly qualified and acting Deputy United States Marshal for the Western District of Kentucky, and states that on November 29, 1943, he was sworn by the United States District Clerk for the Western District of Kentucky to well and truly guard the jury being duly chosen and impaneled to try the issue joined between the United States and the defendant, Thomas Henry Robinson, Jr.

Your affiant further states that acting upon the instructions of the United States District Judge, Shackelford Miller, Jr., he was in charge of all arrangements for safeguarding and protecting the jury in the above case, and he was further instructed and ordered that at no time during the trial of said case and prior to the return of the verdict in said case and the discharge of the jury should he allow anyone to discuss with any member of the jury any fact or other matter pertaining to the trial of the above case, and that no one should be allowed to discuss any matter with a member of the jury unless it was in his presence, or further to allow any member of the jury to see any newspaper, magazine or other publication wherein any reference to the case on trial, to wit, United States v. Thomas Henry Robinson, Jr., was contained.

Your affiant states that acting upon said instructions, he at all times zealously and conscientiously carried out the instructions of the United States District Judge, and that

Affidavit of Marion O. Cassady

at no time during the period from 9:30 A. M., on November 29, 1943, to and including 11:26 P. M. on December 11, 1943, did the members of said jury discuss with anyone any fact or matter relating to the case on trial, to wit, United States v. Thomas Henry Robinson, Jr.

Your affiant further states that no one at any time talked to or had access to any member of the jury except on a few occasions members of their immediate families brought them changes of clothing, or they had occasion to discuss their own private business arrangements with their employees, and that at no time was any conversation had other than in the presence of your affiant and that on none of these occasions was any reference made to the case on trial.

Your affiant further states that at no time did any member of the jury have access to or see any newspaper, magazine or other periodical containing any account of any kind, character or description whatsoever pertaining to the trial of the defendant, Thomas Henry Robinson, Jr., or containing any mention of said trial.

Your affiant further states that the only time any newspapers were delivered to any member of the jury it was after he had personally cut from said newspapers all and every account of said case then being tried; and your affiant states that to his knowledge no juror saw, read or heard any discussion of an account of the trial contained in any newspaper, magazine or other periodical.

Marion O. Cassady.

Subscribed and sworn to before me by Marion O. Cassady this 20th day of December, 1943.

My commission expires Jan. 6, 1947.

Alice E. Spahn,
Notary Public, Jefferson County, Ky.

"Exhibit A."

AFFIDAVIT OF BERNADINE KEARNEY.

Comes your affiant, Bernadine Kearney, who states she is a duly qualified and acting Deputy United States Marshal for the Western District of Kentucky; that on Monday, November 29, 1943, she was duly sworn by the United States District Clerk for the Western District of Kentucky to safeguard and protect the jury impaneled and sworn to try the issue joined between the United States and Thomas Henry Robinson, Jr.

That she was instructed by the Honorable Shackelford Miller, Jr., Judge of the United States District Court for the Western District of Kentucky, to see that no person talked to or discussed with any member of the jury any evidence, fact or phase pertaining to the trial of United States v. Thomas Henry Robinson, Jr., and further to see that no member of the jury had access to or saw an account of the trial of the defendant, Thomas Henry Robinson, Jr., being carried in any newspaper.

Your affiant further states that under her oath she carried out the instruction of the United States District Judge, and that to her own knowledge no one talked to any member of the jury concerning in any manner the case then being tried, and that no one at any time carried on any discussion of any kind with any member of the jury unless she or another Deputy assigned to guard the jury was present.

Your affiant further states that at no time did any member of the jury receive any newspaper, magazine or other periodical unless and until all articles pertaining to the case of United States v. Thomas Henry Robinson, Jr., had been clipped therefrom.

Bernadine Kearney.

Subscribed and sworn to before me by Bernadine Kearney this 20th day of December, 1943.

My commission expires January 6, 1947.

Alice E. Spahn,
Notary Public,

Jefferson County, Ky.

(Seal)

"Exhibit B."

AFFIDAVIT OF JOHN MOORMAN.

Comes your affiant, John Moorman, who states that he is a Special Bailiff in the employ of the United States Marshal for the Western District of Kentucky; that on November 29, 1943, he was duly sworn by the Judge of the United States District Court for the Western District of Kentucky to safeguard and protect the jury duly impaneled and sworn to try the issue joined between the United States and Thomas Henry Robinson, Jr.

Your affiant was further instructed that at no time should any member of the jury have access to see, or hear discussed any newspaper article, or any article of any kind relating to the trial of the defendant, Thomas Henry Robinson, Jr.

Your affiant states that on his oath he carried out the instructions of the United States District Judge and that at no time did anyone discuss with any member of the jury any fact or matter pertaining to the case on trial, to-wit, United States v. Thomas Henry Robinson, Jr., and your affiant further states that at no time was there delivered to any member of the jury any newspaper, magazine or other publication purporting to relate facts which were testified to on the trial of the above case.

Your affiant further states that no member of the jury saw, had access to or read any newspaper, magazine or other publication which contained any reference to the case then on trial.

John Moorman.

Subscribed and sworn to before me by John Moorman this 20th day of December, 1943.

My commission expires January 6, 1947.

Alice E. Spahn,
Notary Public,

Jefferson County, Kentucky.

(Seal)

“Exhibit C.”

AFFIDAVIT OF IDA ROBINSON.

Comes your affiant, Ida Robinson, and states that she is a clerk-stenographer in the office of the United States Attorney at Louisville, Kentucky, charged with the duty of registering witnesses on the date that they are to appear in response to a subpoena and further charged with the duty of discharging witnesses when they are released by the United States Attorney.

Affiant further states that on Wednesday, December 8, 1943, at the direction of the United States Attorney, she caused a praecipe to be issued for the appearance of Ivan Carlisle, Mr. and Mrs. Edward S. Palmer, Thomas C. Furrrie, Joe Stivers and Arthur G. Shields; that they were subpoenaed to appear at 9:00 A. M. on Thursday, December 9, 1943.

Your affiant further states that the witness Ivan Carlisle and other witnesses appeared in her office set aside for the registering of witnesses on December 9, 1943; that at that time they were informed they should make themselves available to the call of the United States; since all witnesses were excluded from the court room, they would have to remain in the office of the United States Attorney, the corridors of the Federal Building, or certain rooms set aside for the use and convenience of witnesses in the offices of the Federal Bureau of Investigation.

Your affiant further states that the witness Ivan Carlisle appeared in her office alone and unaccompanied by any agent of the Federal Bureau of Investigation; that he checked in, was notified as all other witnesses were notified, and received from her a copy of the letter which was delivered to each of the witnesses, copy of which is attached hereto and made a part hereof. That the witness Ivan Carlisle remained, to the best of your affiant's knowledge and belief, adjacent to the court room until court was adjourned at approximately 5:00 P. M. on December 9, 1943. That again on the morning of December 10, 1943 the witness Ivan Carlisle, unaccompanied, with numerous other witnesses, checked in with your affiant and again remained adjacent to the court room until court was adjourned late

Affidavit of Ida Robinson

in the afternoon of December 10, 1943, at which time your affiant was instructed by the United States Attorney to release all Government witnesses, with the exception of four psychiatrists, Doctors Ackerly, Gardner, Kimbell and Landis, since the Government had closed its case.

Your affiant further states that at that time the witness Ivan Carlisle, together with numerous other witnesses, appeared in the office of your affiant and was discharged, at which time there was tendered to him the necessary voucher to present to the United States Marshal to pay for his attendance for the two days and the necessary travel expenses.

Your affiant further states that at no time did she instruct this witness or any other witness not to talk with anyone concerning the case, nor did she treat this witness in any wise different from the approximately 120 other witnesses who were subpoenaed to appear and testify in the above-styled case.

Ida Robinson.

Subscribed and sworn to before me by Ida Robinson this 18th day of December, 1943.

My commission expires Jan. 6, 1947.

Alice E. Spahn,
Notary Public, Jefferson County,
Kentucky.

"Exhibit D."

AFFIDAVIT OF JOHN G. FAULKNER, JR.

Comes your affiant, John G. Faulkner, Jr., and states that he is a duly acting Special Agent of the Federal Bureau of Investigation, Department of Justice, assigned to the Louisville, Kentucky office.

Affiant states that at the direction of the United States Attorney, Ivan Carlisle was interviewed by your affiant on Tuesday, December 7, 1943; that at that time your affiant was seeking to determine the ownership of the Beech Grove Tourist Camp during the year 1931. That on December 7, 1943 your affiant interviewed Ivan Carlisle at his home in Jefferson County, Kentucky at the approximate hour of 1:00 P. M., at which time the interview lasted forty-five minutes, and again at 7:00 P. M., at which time the interview lasted approximately one hour, and that on both of these occasions Ivan Carlisle freely and willingly disclosed to your affiant all the facts as he recalled them concerning the ownership of the Beech Wood Inn and Beech Grove Tourist Camp during the period May, June, July, August and September, 1931 and following. That Ivan Carlisle at that time told that the premises were first rented to Elmer Allen during May, 1931 and that on July 13, 1931 the premises were sold to Edward S. Palmer.

Your affiant further states that during the evening of Tuesday, December 7, 1943 the information learned of Ivan Carlisle was delivered to the United States Attorney and your affiant was instructed by the United States Attorney to return to the home of Ivan Carlisle on Wednesday, December 8, 1943 and inform Ivan Carlisle that a subpoena had been issued for his appearance at 9:00 A. M. on Thursday, December 9, 1943.

Your affiant states that he again went to the home of Ivan Carlisle on Wednesday, December 8, 1943 and that Ivan Carlisle was not at home, and that your affiant left a note informing him that he had been subpoenaed to appear at the office of the United States Attorney on Thursday, December 9, 1943.

Your affiant further states that on Thursday, December 9, 1943 Ivan Carlisle appeared at the office of the United

Affidavit of John G. Faulkner, Jr.

States Attorney, was served with subpoena and was duly checked in by the clerk-stenographer in the office of the United States Attorney.

Your affiant further states that at no time was Ivan Carlisle intimidated, threatened or held incommunicado in the office of the Federal Bureau of Investigation or at any other place; that the witness Ivan Carlisle was treated exactly as each of the other 120 odd Government witnesses that were subpoenaed to appear and testify on the trial of the above-styled case; that the witness Ivan Carlisle appeared on Thursday morning, December 9, 1943, and was released at 5:00 P. M. on December 9, 1943 when the court adjourned trial until 9:30 the next morning.

Your affiant further states that again on Friday, December 10, 1943 Ivan Carlisle checked in at the office of the United States Attorney and remained in the rooms, corridors and places set aside for witnesses duly subpoenaed, between the hours of 9:00 A. M. and 5:00 P. M.

Your affiant further states that it was not necessary to call the witness Ivan Carlisle to testify since it affirmatively appeared from the testimony of Edward S. Palmer and Mrs. Palmer and Elmer Allen that they and only they had custody, control and possession of the premises known as the Beech Wood Inn and the Beech Grove Tourist Camp during the period of May through September, 1931. That at the close of the Government's case on December 10, 1943 witness Ivan Carlisle was discharged exactly the same as some forty other Government witnesses on that date, was released by the United States Attorney, certificate of attendance and mileage was figured by the clerk-stenographer in the office of the United States Attorney, and that he was paid by the United States Marshal exactly as were each of the 120 odd other witnesses that were subpoenaed to appear.

Your affiant further states that the witness Ivan Carlisle left the Federal Building at the close of the testimony of a day's session approximately 5:00 P. M. on December 10, 1943; that at no time was he followed, watched or in any wise interfered with by your affiant or, to the knowledge of your affiant, any other agent of the Federal Bureau of In-

Affidavit of John G. Faulkner, Jr.

vestigation or any other person in the employ of the Department of Justice.

Your affiant further states that during Thursday, December 9 and Friday, December 10, witness Ivan Carlisle, along with witnesses Elmer Allen, Mr. and Mrs. Edward S. Palmer, Thomas C. Furrie, Joe Stivers and Arthur G. Shields, who were subpoenaed at the same time that the witness Ivan Carlisle was subpoenaed, were treated exactly as every other witness was treated; that they were not interfered with or coerced in any manner whatsoever.

Your affiant further states that during the period involved that the witness Ivan Carlisle appeared in response to a subpoena, he was in the corridors of the Federal Building outside of the court room, as all witnesses have been excluded from the court room, in the office of the United States Attorney and in one of the offices of the Federal Bureau of Investigation which had been set aside for the accommodation of Government witnesses; that he was free to go at any time, but was informed that it could not be determined at what point he might be needed to appear and testify and at the instructions of the United States Attorney's office witness Ivan Carlisle and all other witnesses were requested to be available at all times; that this procedure was followed with the witness Ivan Carlisle exactly in the same manner and the same degree as all other witnesses who were subpoenaed to appear and testify on behalf of the Government.

John G. Faulkner, Jr.

Subscribed and sworn to before me by John G. Faulkner, Jr. this 18th day of December, 1943.

My commission expires Jan. 6, 1947.

Alice E. Spahn,
Notary Public, Jefferson County,
Kentucky.

"Exhibit E."

AFFIDAVIT OF JAMES C. BULMAN.

Comes your affiant, James C. Bulman, who is a Special Agent of the Federal Bureau of Investigation, assigned to the Louisville, Kentucky field office.

Your affiant states that he was with Special Agent John G. Faulkner, Jr. on the occasions mentioned in the affidavit of Faulkner in connection with the interview of the witness Ivan Carlisle.

Your affiant further states that he has read and carefully considered the affidavit of Agent Faulkner, and all the facts stated therein are true.

James C. Bulman.

Subscribed and sworn to before me by James C. Bulman this 18th day of December, 1943.

My commission expires January 6, 1947.

Alice E. Spahn,
Notary Public,

Jefferson County Kentucky.

(Seal)

"Exhibit F."

**ORDER FILING RESPONSE OF THE UNITED STATES
TO CERTAIN PORTIONS OF MOTION AND
GROUNDS FOR NEW TRIAL AND ADDITIONAL
GROUNDS FOR NEW TRIAL**—Entered by Judge
Shackelford Miller, Jr., December 16, 1943.

Came the United States District Attorney and tendered his Response on behalf of the United States to certain portions of the motion and grounds for new trial filed on December 13, 1943 and to certain points contained in the additional grounds for new trial filed December 16, 1943, which Response is ordered filed.

**ORDER OVERRULING MOTION AND GROUNDS FOR
NEW TRIAL**—Entered by Judge Shackelford Miller,
Jr., December 16, 1943.

This cause coming on for hearing on the additional grounds in support of motion for new trial and on the response to certain of the grounds filed by the United States Attorney on December 16, 1943, and the hearing being held in the chambers of the United States District Judge at Louisville, Kentucky; the United States being present by Eli H. Brown, III, United States Attorney for the Western District of Kentucky, and the defendant Thomas Henry Robinson, Jr. being present by Robert E. Hogan, his counsel, and full arguments having been had on each of the additional grounds in support of the motion for a new trial, and the response of the United States Attorney being considered, and the Court being fully advised, and the Court being further of the opinion that the defendant Robinson was accorded a fair and impartial hearing, and further being of the opinion that the jury verdict was not the result of passion and prejudice, and further being of the opinion that the said District Judge was not biased and prejudiced and did not influence and impassion the jury to render a verdict of guilty and recommend the imposition of the death penalty, and being further of the opinion that at no time did the Court refuse to comment on evidence produced by the Government on the trial of the case, and it further appearing that the defendant through counsel had requested that the Court deliver twenty-two separate and distinct charges to the jury, and it appearing without contradiction that the Court delivered twenty-one of the charges requested, and upon consideration,

It is Ordered and Adjudged that the additional grounds and motion for a new trial are insufficient and the said motion and grounds for a new trial are overruled, to which the defendant excepts, said exception being allowed by the Court.

**NOTICE OF APPEAL TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS, SIXTH CIRCUIT—**

Filed December 16, 1943.

The United States of America and the Honorable Eli Brown, III, United States District Attorney for the Western District of Kentucky, will hereby take notice, that the defendant, Thomas Henry Robinson, Jr., is appealing, and intends to appeal, this cause to the United States Circuit Court of Appeals, Sixth Circuit; and that this defendant, Thomas Henry Robinson, Jr., will file, or has filed, and intends to file in the office of the clerk of the District Court for the Western District of Kentucky, a notice of said appeal, in duplicate.

Thomas Henry Robinson, Jr.,
Appellant.

Robert E. Hogan,
Counsel for Appellant.

UNITED STATES MARSHAL'S RETURN

—Filed December 16, 1943.

Received this Notice at Louisville, Kentucky, December 16, 1943, and on December 16, 1943, I executed same by delivering a true copy of Notice to Eli H. Brown, III, United States Attorney, Louisville, Kentucky.

L. E. Cranor,
United States Marshal.
M. O. Cassady,
Dep. U. S. M.

**NOTICE OF APPEAL TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS, SIXTH CIRCUIT—
Filed December 16, 1943.**

Name and address of Appellant—

Thomas Henry Robinson, Jr.,
Jefferson County Jail,
Louisville, Kentucky.

Name and address of Appellant's Attorney—

Robert E. Hogan,
809 Kentucky Home Life Bldg.,
Louisville, Kentucky.

Offense—Unlawfully and knowingly transporting in interstate commerce a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, to-wit: Mrs. Alice Stoll, and did not liberate her unharmed, Section 408-a, Title 18, United States Code Annotated.

Date of Judgment—Verdict of Jury December 11, 1943, Judgment entered thereon as "guilty" December 11, 1943, which said verdict carried with it a recommendation that the death penalty be imposed.

Description of Judgment—Judgment was entered in accordance with the recommendations of the jury verdict, and sentence was imposed December 13, 1943, imposing the death penalty upon this defendant, to be executed March 10, 1944, by the electrocution of this defendant at the Eddyville, Kentucky, Penitentiary, in the manner provided by Kentucky laws.

Name of Prison where now confined—

Jefferson County,
Kentucky, Jail,
Louisville, Ky.

(Defendant to be removed to some Federal Prison)

I, the above named appellant, Thomas Henry Robinson, Jr., hereby appeal to the United States Circuit Court of

Notice of Appeal, Etc.

Appeals for the Sixth Circuit from the judgment above-mentioned on the grounds set forth below.

Thomas Henry Robinson, Jr.,
Appellant.

Dated December 15, 1943.

GROUND S OF APPEAL.

1. The Court erred in overruling appellant's plea in abatement, to which ruling appellant excepted.
2. The Court erred in overruling appellant's motion to elect which of the counts of the indictment it desired to prosecute, to which ruling appellant excepted.
3. The Court erred in overruling appellant's motion to dismiss the indictment, to which ruling appellant excepted.
4. Error of the Court in overruling appellant's motion to allow him to inquire into the proceedings and evidence of the Grand Jury which returned the indictment, and to inspect the minutes of said Grand Jury and to procure testimony and affidavits from said Grand Jurors and witnesses, to which ruling the appellant excepted.
5. Error of the Court in overruling appellant's motion to strike the motion of the United States for the appointment of psychiatrists to render a report to the Court, to which ruling the appellant excepted.
6. Error of the Court in appointing psychiatrists and having them to report to the Court on the appellant's sanity or insanity, to which ruling the appellant excepted.
7. Error of the Court in sustaining motion of the United States to strike the appellant's Plea in Abatement, to which ruling appellant excepted.
8. Error of the Court in overruling appellant's motion to fix bail, to which appellant excepted.
9. Error of the Court in overruling the demurrer of appellant to the indictment, to which ruling this appellant objected and excepted at the time, and still excepts.

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10. The trial court erred in ruling that this was a "capital case," to which appellant excepted, and still excepts.
11. The Court erred in overruling appellant's motion to dismiss at the conclusion of the Government's case, to which ruling appellant excepted, and still excepts.
12. The Court erred in overruling appellant's motion to dismiss at the close of all of the evidence, to which ruling appellant excepted, and still excepts.
13. The Court erred in overruling appellant's Motion in Arrest of Judgment, to which ruling appellant excepted, and still excepts.
14. The Court erred in overruling appellant's motion and grounds for new trial, to which ruling the appellant excepted, and still excepts.
15. The verdict of the jury is flagrantly contrary to law and against the weight of the evidence.
16. The verdict was one of an impassioned and prejudiced jury.
17. The verdict of the jury was swayed and influenced by false and untrue testimony of witness Elmer G. Allen and of witnesses Mr. and Mrs. Palmer concerning the existence, or non-existence, of tourist camp facilities and accommodations at Beechwood Inn or Beech Grove Inn.
18. The Court erred in refusing to permit witness Ivan Carlisle to fully rebut the testimony of witnesses Elmer G. Allen and Mr. and Mrs. Palmer concerning said tourist camp facilities, to which ruling the appellant excepted and still excepts.
19. The Court erred in excluding testimony of witness W. K. Powell, which testimony tended to, and did, contradict witness Ann Woolet, to which exclusion the appellant excepted and made an avowal.
20. The Court erred in excluding testimony of witnesses Joseph Hayse and Nellie Steoss Hayse to contradict and impeach the testimony.

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21. The Court erred in refusing to permit a prior statement or statements of witness Ann Woolet to be read to contradict and impeach her, to which appellant excepted, and still excepts.
22. Error of the Court in allowing Ann Woolet and Fowler Woolet to invoke the privilege of refusing to allow their previous statements to be read to contradict and impeach their testimony, refusing to do so on the ground that when they had given such statements the relationship of attorney and client existed between them and an attorney.
23. Error of the Court in ruling that the relationship between Ann Woolet and Joseph Hayse was that of attorney and client and that any statements so made to him were subject to the rule of privileged communications, when witness Ann Woolet had previously testified that she had not consulted any attorney, to which appellant excepted.
24. Error of the Court in instructions given by the Court and in refusing to give offered charges of appellant, to which appellant excepted, and still excepts.
25. Error of the Court in commenting upon, and discrediting the testimony of Doctors Solomon and Crice, as each comment was designed to, and did, sway the jury and caused the jury to disregard their testimony and such comments from the Court tended to, was designed purposely to, and did destroy appellant's defense of insanity.
26. Error of the Court in commenting upon the testimony of witness Alvin Kirtley, as such comments were designed to have, and did have, a swaying, influential and prejudicial effect upon the jury and its verdict.
27. Error of the Court in commenting upon, and unduly stressing that appellant had written and admitted that this appellant was the kidnaper of Mrs. Alice Stoll, which comment was purposely designed to, and did, completely destroy the issue of whether she was kidnapped after being held for ransom, and likewise de-

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stroyed this appellant's defense that she went willingly, and such comment swayed the jury prejudicially against this appellant.

28. The Court erred in commenting upon, and unduly and impassionately stressing to the jury, the questioned fact of whether or not Mrs. Alice Stoll had a cut on her head or was suffering from other injuries sustained while kidnapped, causing said jury to be swayed, prejudiced and impassioned against this defendant (appellant herein), and, by reason of said passion engendered in their minds by the Court, causing said jury to recommend the imposition of the death penalty upon this appellant, without which said comment and impregnated passion said jury would not have recommended the imposition of the death penalty upon this appellant.
29. The Court erred in refusing to direct a verdict or acquittal at the close of the Government's case and at the end of the testimony on both sides.
30. The Court erred in overruling appellant's objection to the introduction of testimony upon the condition of Mrs. Alice Stoll at the time of her release; that is, whether or not she was suffering from any injuries at the time of her release which had been inflicted during the period of her alleged captivity, for the reason that the indictment, while charging, in the language of the statutes, that Mrs. Alice Stoll was not released unharmed, was not specific enough to put this appellant on notice of what he might be expected to meet so that he might plead in bar to some future indictment; and without the introduction of testimony on the physical condition of Mrs. Stoll upon her alleged release the Court could not instruct that the jury might return a recommendation of death penalty and the Court could not impose the death penalty.
31. The Court erred in overruling appellant's motion to strike all of the testimony of witness Knowles, the fingerprint expert, and all the exhibits and specimens introduced by or through him, because said witness

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Knowles testified that the fingerprints in question were made by Thomas H. Robinson, a person other than this appellant, Thomas H. Robinson, Jr., and because that difference in identification is important in this case because both Thomas H. Robinson, Sr., and Thomas H. Robinson, Jr., were jointly indicted in this cause.

32. The Court erred in refusing offered testimony of this appellant, and in permitting the United States of America to introduce incompetent and irrelevant testimony.
33. The proof fails to show that Alice Speed Stoll was held for ransom or reward, or that any ransom or reward was ever actually delivered to this appellant.
34. The testimony which tends to connect this appellant with the commission of the offense charged in the indictment was, and is, insufficient to warrant submitting this cause to the jury under this indictment.
35. The Court erred in pronouncing judgment against, and sentence upon, this appellant.
36. The Court erred in permitting jurors to have access to, and to read, newspapers carrying news accounts of a highly prejudicial nature against this appellant.
37. The Court erred in instructing the jury that they might return a verdict carrying a recommendation that the death penalty be imposed.
38. There was a complete lack of any evidence that, at the time of the rendition of the verdict herein and the imposition of sentence, the alleged victim, Mrs. Alice Stoll, was in a harmed condition, and because the statute in question forbids the imposition of the death penalty if at the time of imposition of sentence the alleged victim is produceable, or is produced, in an otherwise than harmed condition; that is to say, she was alive, normal, healthy and was not suffering from any injuries, and did not claim to be so suffering, that may have been inflicted during her period of captivity. The indictment in this cause is defective and duplicitous, and does not contain facts or allegations suffi-

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cient to constitute an offense against the United States of America, or to charge this appellant with the commission of any offense against the United States of America.

39. The Court erroneously permitted evidence of prior crimes and indictments and evidence that this appellant attempted to "smear" other women, and that this appellant had been charged, though not convicted, of the commission of other offenses, all of which was, and is, highly prejudicial to the substantial rights of this appellant.
40. The Court erroneously permitted evidence of lay witnesses to be introduced to establish that this appellant knew right from wrong.
41. The Court erroneously permitted a letter, written by this appellant while an inmate in the Leavenworth Penitentiary, to be read, and which letter tended to establish, and did sway the jury into believing, that this appellant and his family and friends had devised the appellant's prior adjudications of insanity as a cloak or shield for this appellant to hide behind to escape prosecution in Tennessee; which letter, as established by the unrebutted testimony of this appellant, was written involuntarily by this appellant as a result of an inducement by the warden or other prison authorities offered to this appellant that if he would write such a letter he, this appellant, would be taken out of solitary confinement.
42. The judgment and sentence imposed are too harsh and wholly out of reason or proportion to anything proven against this appellant.
43. The jury's verdict was, and is, the result of passion and prejudice engendered in their minds by reason of some alleged untruths told of and about Mrs. Alice Stoll by appellant and by reason of alleged "smearing" of said Mrs. Stoll and of some other women in Tennessee, when in truth and in fact "smearing" and untruthfulness are not alleged in this indictment, and

Notice of Appeal, Etc.

the jury's verdict, influenced as it was, by what this appellant is alleged to have said rather than what he did or what he was charged in the indictment of doing.

44. The Court, in accepting the impassioned recommendation of the jury that the death penalty be imposed, and in imposing the death penalty upon this appellant, did so because, as stated openly in Court by the Court, that he believed that the things said by appellant of and about Mrs. Alice Stoll were untrue, and that he believed that the jury were influenced by those alleged untruthful statements, and as a result the death penalty was recommended; that he, the Court, would not have followed the recommendation of the jury and would not have imposed the death penalty had not this appellant made statements of and about Mrs. Alice Stoll which were unbelieved by the Court.
45. The Court had no right to consider what this appellant said or may have said, and had no right to impose the death penalty upon appellant because of what he said rather than what he did, in the bounds of the indictment's accusations.
46. This appellant is not and was not charged with slander or of uttering slanderous words, and slander or the utterance of besmirching words are not crimes punishable by death.
47. The Court itself was biased and prejudiced against this appellant and influenced the jury to render a verdict of guilty against appellant and to recommend the imposition of the death penalty.
48. The Court failed to consider, as mitigating circumstances, the fact that this defendant had in 1936, in the very same court room, been illegally arraigned, convicted, and punished and confined subsequently for over 7 years in penitentiaries in violation of his Constitutional and legal rights.
49. The Court commented unfavorably upon certain of appellant's evidence and testimony in a deliberate at-

Notice of Appeal, Etc.

tempt to influence and impassion the jury to convict this appellant and to recommend the imposition of the death penalty.

50. The Court failed to comment upon the Government's testimony.
51. The Court failed to comment that the Government had deliberately attempted to obstruct justice and to suppress evidence by holding witness Ivan Carlisle a virtual prisoner in the office of the F. B. I. until the Government had announced it had closed its case at the end of all the testimony, said witness Carlisle being a most important witness to the fact that certain tourist camp facilities were in existence and being used in the summer of 1931, a much disputed question, and a fact about which the Court expressed opinion that this appellant had told an untruth.
52. The Court failed and refused to comment upon the Government's failure to produce fingerprint evidence to show appellant had ever handled or wielded the iron pipe introduced as the pipe with which Mrs. Stoll had been allegedly struck.
53. The Court failed to comment upon the Government's failure to produce fingerprint evidence connecting this appellant with the handling of many exhibits and documents—witness Knowles, the fingerprint expert having stated that the fingerprints were made by Thomas H. Robinson, a person other than Thomas H. Robinson, Jr., appellant herein.
54. The Court failed to comment upon the lack of chemical or other analysis of blood claimed to have been produced when Mrs. Stoll was allegedly struck with a pipe. This lack of analysis was material and important in view of the undue stress laid upon the alleged blows to the head of Mrs. Alice Stoll, the blood alleged to have been produced by the alleged blows, and the injuries alleged to have been inflicted upon the alleged victim.

Notice of Appeal, Etc.

55. The Court failed to comment upon the failure of the Government to produce the bed-spread, or coat, or other articles upon which it was claimed Mrs. Stoll's blood was spilled as a result of allegedly being struck by the alleged pipe. No explanation or reason was advanced by the Government why such articles were not produced. The Government's failure to produce them and its failure to explain why they were not produced is a most important circumstance and tends to establish that no blow was struck and no blood was spilled.
56. The Court unfavorably commented upon other testimony and evidence of this appellant and failed to comment in any instance upon the Government's testimony.
57. Improper conduct on the part of the District Attorney in displaying an iron pipe to the jury with which it was claimed this appellant struck Mrs. Alice Stoll, and in keeping said iron pipe in view of the jury during the trial, and in one instance deliberately rapping said pipe on the counsel table in full view of the jury, causing a thunderous noise to be made thereby, such that the official Court stenographer was so frightened that she was compelled to, and did, ask for time to compose herself; such demonstration by the District Attorney being deliberately resorted to to impress upon the minds of the jury the heinousness of the alleged blows, and to impassion said jury against this appellant—to which unwarranted demonstration appellant's counsel called attention of the Court, and appellant then objected and excepted and still excepts; this unwarranted demonstration being made with a pipe that nowhere in the testimony was directly or at all established as being the pipe alleged to have been used by appellant in wielding the alleged blows.
58. Improper conduct of the District Attorney in telling the jury and detailing a conversation alleged to have been had between Mrs. Alice Stoll and the District Attorney in the office of the District Attorney, relating to the District Attorney informing Mrs. Alice Stoll of

Notice of Appeal, Etc.

what testimony she might expect to be brought out upon the trial, there being no testimony or evidence in the record to warrant or justify such comment by the District Attorney; said District Attorney when relating to the jury such alleged conversation resorted to tears in a deliberate effort to impassion the jury and which did impassion members of the jury and such misconduct had a decisive and swaying effect on said jury and contributed to, and did, cause said jury to not only render a verdict of guilty but to recommend the death penalty.

59. The testimony of appellant concerning his acquaintanceship with Mrs. Alice Stoll during the year 1931 stands, on this record, unimpeached, uncontradicted, and undenied, and therefore, on this record, stand admitted; and it was a grievous error to impose the death penalty or any harsh penalty upon this appellant based upon what this appellant said of or about Mrs. Alice Stoll, when, what he said of or about her stands un rebutted and uncontradicted.

Thomas Henry Robinson, Jr.,

Appellant.

Robert E. Hogan,

Counsel for Appellant,

Notice of filing

accepted: This 16 day of December, 1943.

Eli H. Brown, III,

U. S. District Attorney.

ORDER FILING NOTICE OF APPEAL AND GROUNDS OF APPEAL—Entered by Judge Shackelford Miller, Jr., December 16, 1943.

Came the defendant by counsel, and tendered in duplicate his Notice of Appeal to the United States Circuit Court of Appeals, Sixth Circuit, said Notice to be served on the United States District Attorney for the Western District of Kentucky, which Notice is hereby filed.

Counsel also tendered Notice of Appeal and Grounds of Appeal, with notice of filing accepted thereon by Eli H. Brown III, United States District Attorney December 16, 1943, which Notice and Grounds of Appeal is hereby filed.

ORDER SUSTAINING APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL TO THE CIRCUIT COURT OF APPEALS—Entered by Judge Shackelford Miller, Jr., Dec. 16, 1943.

This action having come on to be heard upon the application of defendant, Thomas Henry Robinson, Jr., and as Relator-Appellant, for leave to proceed in forma pauperis on appeal to the United States Circuit Court of Appeals, Sixth Circuit; and said defendant having filed herewith his affidavit in support of said application that he is not able to pay the costs of said appeal or to give security for same, and that he believes he is entitled to the redress he seeks; and the Court being sufficiently advised, said application or motion is hereby sustained; and It Is Hereby Ordered, Adjudged And Decreed that Thomas Henry Robinson, Jr., be, and he is hereby, given leave and is hereby authorized, permitted and allowed to proceed in forma pauperis on appeal to the United States Circuit Court of Appeals, Sixth Circuit, and he is hereby further allowed and permitted, in said forma pauperis such other and further orders and

Order Sustaining Application, Etc.

processes as may cause all and singular the records, papers, exhibits, Bill of Exceptions, and proceedings in said cause to be sent to the United States Circuit Court of Appeals for the Sixth Circuit, under and according to the law of the United States in that behalf made and provided, so that the same may be inspected and the Judges of the said Circuit Court of Appeals, Sixth Circuit, may cause all further to be done therein to correct that error what of right and according to law ought to be done.

**MOTION FOR ORDER STAYING AND SUSPENDING
EXECUTION OF JUDGMENT AND FIXING BAIL**

—Filed December 20, 1943.

Comes the defendant, Thomas Henry Robinson, Jr., in person and by counsel, and moves the Court for an order staying and suspending the execution of the judgment herein, and for a supersedeas to issue staying the execution of the judgment herein pending this defendant's appeal to the United States Circuit Court of Appeals, Sixth Circuit; and further moves the Court for an order releasing this defendant upon bail and fixing bail in a reasonable amount pending this defendant's appeal to the United States Circuit Court of Appeals, Sixth Circuit, and that upon this defendant furnishing such bail as may be fixed, with sufficient surety, that he be discharged from custody.

Thomas Henry Robinson, Jr.,
Defendant.

Robert E. Hogan,
Counsel for Defendant.

Have seen:

Eli H. Brown III,
U. S. Atty.

12/20/43

Release on bail objected to.

**ORDER FILING MOTION TO STAY EXECUTION AND
FOR SUPERSEDEAS TO ISSUE, AND NOTICE OF
MOTION WITH SERVICE OF SPECIAL BAILIFF**

—Entered by Judge Shackelford Miller, Jr., December 20, 1943.

Came the defendant by counsel and tendered Motion for an order staying and suspending the execution of the judgment herein and for a supersedeas to issue staying execution pending defendant's appeal, and further for an order releasing defendant upon bail fixed in a reasonable amount pending appeal, and upon defendant's furnishing such bail with sufficient surety, that he be discharged from custody, with objection of the District Attorney to defendant's release on bail noted thereon.

Counsel also tendered Notice of said Motion with the return of special bailiff, indicating service on the United States District Attorney and the United States Marshal for the Western District of Kentucky.

It is ordered said Motion and Notice be and they are hereby filed.

**ORDER STAYING AND SUSPENDING EXECUTION
OF SENTENCE PENDING APPEAL**—Entered by

Judge Shackelford Miller, Jr., December 20, 1943.

The defendant, Thomas Henry Robinson, Jr., having appealed from the judgment of conviction herein, and having moved the Court for an order directing that the said appeal be made a supersedeas, and the Court being sufficiently advised, it is hereby ordered, adjudged and decreed that the appeal filed by this defendant, Thomas Henry Robinson, Jr., be made, and it is hereby considered, a supersedeas; and it is further ordered and decreed that the execution of the judgment and the sentence imposed

Order Staying and Suspending Execution, Etc.

thereunder and pursuant thereto be, and it is hereby ordered, stayed and suspended pending appeal by said defendant; and the Marshal of this Court shall be governed in accordance with the terms of this order.

Have seen:

Eli H. Brown III,
U. S. Atty.

12/20/43

Receipt of attested copy of this order is hereby acknowledged Dec. 20, 1943.

I. E. Cranor,
U. S. Marshal.

ORDER OVERRULING MOTION FOR BAIL—Entered by Judge Shackelford Miller, Jr., December 20, 1943.

This action having come on to be heard on the Motion of the defendant for an order releasing him upon bail and fixing bail in a reasonable amount pending defendant's Appeal to the United States Circuit Court of Appeals, Sixth Circuit, and for this defendant to be discharged from custody upon his furnishing such bail as might be fixed with sufficient surety;

And the Court being sufficiently advised said Motion is hereby overruled, to which the defendant, Thomas Henry Robinson, Jr. by counsel objected and excepts.

NOTICE—Filed December 20, 1943.

The United States Marshal for the Western District of Kentucky, L. E. Cranor, and the District Attorney for the Western District of Kentucky, Eli H. Brown III, will hereby take notice that the defendant, Thomas H. Robinson, Jr., is objecting to being confined in, or committed to any State or Federal penitentiary, house of correction, or any other Federal institution, pending this defendant's appeal to the United States Circuit Court of Appeals, Sixth Circuit, and will further take notice that this defendant is moving the Court for a supersedeas to issue, and for the fixation of bail in a reasonable sum pending this defendant's said appeal; and this defendant hereby further notifies the said United States Marshal, and the said District Attorney, that in the event of this defendant's failure to provide such bail as may be fixed by the Court, this defendant objects to being removed from the Jefferson County jail, because to do so while his appeal is pending, or while his appeal is being prepared, would be in violation of this defendant's constitutional and legal rights, and he intends to rely upon those rights, and he does not elect to begin service of the sentence or judgment.

Thomas Henry Robinson, Jr.,
Defendant.

Robert E. Hogan,
Counsel for Defendant.

ORDER FILING WRITTEN REPORT OF PSYCHIATRISTS—Entered by Judge Shackelford Miller, Jr., December 21, 1943.

The written report on the condition of the defendant, Thomas Henry Robinson, Jr., to Judge Shackelford Miller, Jr., made by Drs. Spafford Ackerly, Wm. E. Gardner, Isham Kimbell and E. E. Landis, psychiatrists, and dated October 11, 1943 is now ordered filed.

REPORT OF PSYCHIATRISTS—Filed December
21, 1943.

Honorable Shackelford Miller, Jr. Louisville Kentucky
United States District Judge October 11, 1943.
Federal Building,
Louisville, Kentucky

Re: Robinson, Thomas Henry, Jr.

Dear Sir:

We, the undersigned psychiatrists on October 11, 1943, have completed the examination of Thomas Henry Robinson, Jr., in accordance with your request.

Our examination of the defendant consisted of: (1) a physical examination; (2) a neurological examination; (3) a mental examination.

The physical examination was necessary in order that we might determine whether this man suffers from any physical illness which might in any way interfere with or influence his power of reasoning or his will power; or serve as a causative factor in the production of any form of mental disorder.

We find the defendant to be in good physical condition and that he does not suffer from any acute or chronic illness which might interfere with the normal function of his mind.

A neurological examination was necessary in this, as in any other neuro-psychiatric examination, to determine the presence or absence of any disease or condition of the peripheral nerves, the cranial nerves, or any part of the central nervous system, including the brain, which might in any way interfere with the normal functioning of the mind or become a causative factor in the production of mental disease.

We find no evidence of disease or impairment of the functions of the peripheral nerves, the cranial nerves or of the central nervous system, including the brain.

Mental Examination: The defendant came quietly and willingly into the examining room and cooperated in the physical, neurological and mental examination. His speech

Report of Psychiatrists

was free, relevant, coherent; orientation correct in all spheres, and he was in normal contact with his surroundings. No delusions, illusions, or hallucinations were elicited. He shows normal insight; his judgment is not impaired; he shows appropriate emotional responses; and he does not show evidences of mental or emotional deterioration.

The diagnosis in this case is "Without Psychosis." This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible.

Respectfully submitted,

(s) Spafford Ackerly	(s) Isham Kimbell
Spafford Ackerly, M. D.	Isham Kimbell, M. D.
(s) Wm. E. Gardner	(s) E. E. Landis
Wm. E. Gardner, M. D.	Edw. E. Landis, M. D.

AFFIDAVIT OF ROBERT E. HOGAN.

United States of America, }
 State of Kentucky, }
 County of Jefferson. }

Affiant, Robert E. Hogan, states that he is counsel of record for the defendant, Thomas Henry Robinson, Jr.; that Notice of Appeal in the above styled cause was filed on December 16, 1943; that the trial of said case lasted for 13 trial days; that the record is voluminous; and affiant further states that on December 17th, 1943, this affiant wrote to the Clerk of the United States Circuit Court of Appeals, Sixth Circuit, notifying said clerk of said appeal, and requested that said Clerk furnish this affiant with a copy of the rules of said Circuit Court of Appeals; that under date of December 20th, 1943, said Clerk wrote this

Affidavit of Robert E. Hogan

affiant that he did not have any pamphlet copies of the rules of said Court for distribution and suggested that this affiant obtain such a copy from the Gates Legal Publishing Company, Cleveland, Ohio; that this affiant, promptly on receipt of said letter and said advice, wrote to said publishing company requesting a copy of said rules and under date of January 5, 1944, this affiant received from said publishing company a copy of the Rules of the United States Circuit Court of Appeals for the Sixth Circuit; that this affiant had no such copy of said rules previous to the taking of the aforesaid appeal, nor did this affiant have access to any copy of said rules, and affiant says that he has acted diligently in the matter of obtaining the rules of the said Circuit Court of Appeals. A copy of this affiant's letter of December 17, 1943, to said Clerk of said Circuit Court of Appeals, together with the original of said Clerk's letter to this affiant dated December 20, 1943, are filed with this affidavit in support thereof.

Affiant further states that the matters on appeal are material and important, and that more time is required for the preparation and settling of the bill of exceptions; the docketing of the appeal; the preparation of the record in this case; and the preparation and filing of defendant's assignment of errors; that the stenographers who took the evidence in his case have only recently compiled and arranged the same in form so that, if it meets the approval of the District Judge and the parties to said action, it may be filed as a bill of exceptions; that the record is voluminous and the Clerk of this Court has not copied the same, and can not copy the same for many days; that the assignment of errors will be voluminous and that, considering the importance of this case and the questions and matters involved therein, more and additional time is reasonably required for the aforesaid purposes.

In Testimony Whereof, witness the signature of this affiant this 5th day of January, 1944.

Affiant (Counsel for Thomas Henry
Robinson, Jr.)

Affidavit of Robert E. Hogan

Subscribed and sworn to before me this 5th day of January, 1944, by Robert E. Hogan.

My commission expires _____.

Notary Public, Jefferson County, Ky.

AFFIDAVIT OF THOMAS HENRY ROBINSON, JR.

United States of America,	}	ss.
State of Kentucky,		
County of Jefferson.		

Comes the defendant, Thomas Henry Robinson, Jr., who deposes and says that: he is now incarcerated in the Jefferson County, Kentucky, Jail; that under date of December, 1943, he was sentenced, pursuant to a jury verdict and recommendation of said jury, to death by electrocution March 10, 1944, in the manner provided for by the laws of Kentucky; that on said December 13, 1943, this defendant filed a motion and grounds for new trial, and later additional grounds in support of his motion for a new trial, which said motion and grounds for a new trial was subsequently by this Court overruled, with exceptions to this defendant.

Affiant further states that the record in this case is voluminous; that the official stenographer's transcript of the evidence consists of in excess of 2,000 typewritten pages; that said official stenographer, or the stenographers assigned to take, and who did take shorthand notes of the testimony at said trial have not, as yet, completed the arranging and assembling of said transcript of testimony in such manner as to enable the District Judge to examine, settle or file the same as a bill of exceptions; that the trial of this case extended for a period of over two weeks—13 days of trial time—; that the issues involved are consid-

Affidavit of Thomas Henry Robinson, Jr.

erable; that the maximum penalty of death was imposed upon this defendant; that the issues involved are important and material; that this defendant believes that grave errors were committed during the trial of this case which are of such nature as to warrant and to justify the reversal of this verdict and judgment and that the material and substantial rights of this defendant have been prejudiced, and that it is necessary that a proper and comprehensive bill of exceptions be prepared, settled and filed in this case; that, due to the above facts and to the fact that the original time of 30 days allotted by the rules for the settling and filing of such a bill of exceptions has been, and is, wholly insufficient for such purpose, and that such a bill of exceptions and this defendant's assignment of errors cannot reasonably be settled, filed, or accomplished within said 30-day period, this defendant respectfully moves the Court to enter an order extending the time in which for this defendant to file his assignment of errors, and to have settled and filed his bill of exceptions.

Witness the signature of this affiant this 5th day of January, 1944.

Affiant.

Subscribed and sworn to before me this 5th day of January, 1944, by Thomas H. Robinson, Jr.

My commission expires September 8, 1946.

Notary Public, Jefferson County, Ky.

**DESIGNATION OF CONTENTS OF RECORD ON
APPEAL**—Filed January 6, 1944.

Comes the defendant, Thomas Henry Robinson, Jr., and hereby designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal, as follows:

1. The indictment; all motions, orders, and entries of record, and rulings of the court thereon, together with objections and exceptions made or taken thereon or thereto; and for the purposes of an appeal the Clerk of this Court is hereby directed to copy the entire record, except the praecipes, subpoena, and return thereon, making an original typewritten copy and three clear carbon copies thereof; or in lieu thereof the printed record in the required number of copies.

2. All the evidence and proceedings of the trial and hearing of the above action, including all evidence and proceedings at said trial and hearing stenographically reported, together with such evidence and proceedings of said trial and hearing as may be incorporated in a bill of exceptions and settled and filed in this case.

Robert E. Hogan,
Counsel for Defendant, Thomas
H. Robinson, Jr.

Notice of filing
accepted:

Eli H. Brown III,
United States District Attorney
for the Western District of
Kentucky.

**ORDER FILING DESIGNATION OF CONTENTS OF
RECORD ON APPEAL**—Entered by Judge Shackel-
ford Miller, Jr., January 6, 1944.

Upon the motion and affidavits of the defendant, Thomas Henry Robinson, Jr., by counsel, which are hereby ordered filed, and which motion is sustained, said defendant's Designation of Contents of Record on Appeal is hereby ordered filed.

**MOTION TO EXTEND TIME FOR FILING RECORD ON
APPEAL AND DOCKETING THE ACTION.**

Comes the defendant, Thomas Henry Robinson, Jr., and moves the Court for an order extending the time for filing the record on appeal and docketing the action.

Counsel for the defendant, Thomas
Henry Robinson, Jr.

Notice of filing accepted:

United States District Attorney,
Western District of Kentucky.

**ORDER EXTENDING TIME FOR FILING RECORD ON
APPEAL AND DOCKETING ACTION.**

Upon motion of Defendant, Thomas Henry Robinson, Jr., by counsel, which is hereby ordered filed and is sustained, the time for filing the Transcript of Record and docketing this case on appeal in the United States Circuit Court of Appeals for the Sixth Circuit, is hereby ordered extended to and including March 10, 1944.

Shackelford Miller, Jr.,
Judge.

January 6, 1944.

MOTION.

Comes the defendant, Thomas Henry Robinson, Jr., and moves the Court for an order extending, for a reasonable time, the time in which, for this defendant to file his assignment of errors, and to have settled and filed his bill of exceptions.

Counsel for Thomas Henry
Robinson, Jr.

Notice of filing accepted:

United States District Attorney
For the Western District of
Kentucky.

ORDER EXTENDING TIME FOR FILING ASSIGNMENT OF ERRORS AND BILL OF EXCEPTIONS.

Upon motion and affidavits of the defendant, Thomas Henry Robinson, Jr., by counsel, which are hereby ordered filed, and which motion is sustained, the time in which said Defendant may file his Assignment of Errors and to have settled and filed his Bill of Exceptions, is hereby ordered extended until 4:30 P. M., February 19th, 1944.

Shackelford Miller, Jr., Judge.

January 6, 1944.

ORDER PERMITTING DEFENDANT'S APPEAL IN FORMA PAUPERIS—Entered by Judge Shackelford Miller, Jr., January 11, 1944.

An order having heretofore been entered permitting the defendant to appeal in forma pauperis to the Circuit Court of Appeals of the Sixth Circuit, I now direct that the expense of printing the record on appeal be paid by the United States, and the same shall be paid when authorized by the Attorney General, Title 28, Section 832, U. S. C.

ASSIGNMENT OF ERRORS—Filed February 18, 1944.

(The numbered pages hereafter refer to the original trial transcript, indicated "TRANSCRIPT OF EVIDENCE.")

Now comes defendant, Thomas Henry Robinson, Jr., appellant, and says that in the record, proceedings, verdict and judgment there are manifest errors, and for assignment thereof says that:

ASSIGNMENT OF ERROR NO. 1.

The Court erred in denying the motion made on behalf of the defendant, Thomas Henry Robinson, Jr., to quash the indictment prior to the trial because said indictment did not, as a matter of law, charge the defendant with a crime, or crimes, as purported to be set out in count Two of said indictment;

(a) Because the Grand Jurors, by whom the said indictment was found and returned on October 20, 1934, had no lawful evidence submitted to them, and said Grand Jurors were without right or power or jurisdiction to return the same; and because said grand jury had no legal evidence submitted to them of the matter and acts constituting the charges made against this defendant-appellant as they are included in the said indictment;

(b) Because the United States of America did not offer to or before said Grand Jurors any lawful, or other, evidence whatsoever that the defendant did not liberate Mrs. Alice S. Stoll unharmed from such alleged kidnaping and confinement.

ASSIGNMENT OF ERROR NO. 2.

The Court erred in arraigning the defendant-appellant, trying him, permitting the jury to convict him, and in imposing sentence upon him, because it is provided by Section 591, Title 18, United States Code Annotated, that where an offender is committed in any district other than

Assignment of Errors

where the offense is to be tried, it shall be the duty of the judge of the district where the offender is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had; and because this defendant-appellant was committed in the Southern District of the United States Court for the Northern District of California, a district other than where the offense charged in this case was to be tried, and neither the judge of the district where this defendant was imprisoned seasonably issued, nor did the marshal execute on this defendant, a warrant for this defendant's removal to the Western District of Kentucky United States District Court where the trial was to be had; and in further support of said error this defendant-appellant says that he was illegally held in Alcatraz Island Penitentiary and applied for, and was granted, a habeas corpus by Judge Michael J. Roche, United States District Judge, Southern District of the United States Court for the Northern District of California, and it was further ordered that this defendant-appellant be released from the custody of Warden James A. Johnston, Warden of the United States Penitentiary, Alcatraz, California, and this defendant was so released in the State of California, Southern District of the United States Court for the Northern District of California without said judge of said district where this defendant was imprisoned ever issuing, or the said marshal ever executing, a warrant for this defendant-appellant's removal from said Southern District of the United States Court for the Northern District of California to the United States District Court for the Western District of Kentucky; and because after this defendant-appellant was so released in said California District he was not arraigned before any magistrate or Commissioner or Judge, but that instead he was illegally and forcibly brought from said California District to the Western District of Kentucky, and in said United States District Court, Western District of Kentucky, illegally arraigned, illegally tried, illegally convicted, and illegally sentenced.

*Assignment of Errors***ASSIGNMENT OF ERROR NO. 3.**

Error of the Court in overruling the defendant's demurrer to the indictment on the grounds:

(a) That said indictment did not contain facts or allegations sufficient to constitute any offense against the United States of America or to charge this defendant with the commission of any offense against the laws of the United States of America;

(b) That said indictment was not sufficiently definite or certain to conform to the requirements of the Constitution of the United States of America, or to enable the defendant to properly prepare his defense;

(c) That the second count of said indictment was duplicitous, in that more than one separate and distinct offense is charged in said count.

ASSIGNMENT NO. 4.

Error of the Court in overruling motion of the defendant to allow the defendant to inquire into the proceedings and evidence of the Grand Jury which returned the indictment and to permit defendant to inspect the minutes of said grand jury and to procure testimony and affidavits from said Grand Jurors and witnesses.

ASSIGNMENT OF ERROR NO. 5.

Error of the Court in overruling motion of defendant to dismiss the indictment and prosecution, based upon the ground that the right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution had been violated by the delay of some seven or more years without affording defendant a trial, even though during all of which time the defendant was in the custody of the United States and at all times available for trial.

ASSIGNMENT OF ERROR NO. 6.

Error of the Court in sustaining motion of the United States of America to strike defendant's plea in abatement.

*Assignment of Errors***ASSIGNMENT OF ERROR OF COURT NO. 7.**

Error of Court in overruling defendant's motion to require an election of which of counts one or two it would prosecute against this defendant.

ASSIGNMENT OF ERROR NO. 8.

Error of the Court in overruling motion of this defendant, made at the close of the presentation in chief by the United States of its evidence, for a directed verdict of acquittal of this defendant and dismissal of the indictment, because the United States wholly failed to prove the allegations charged against this defendant in said indictment.

ASSIGNMENT OF ERROR NO. 9.

Error of the Court in overruling this defendant's motion for a directed verdict of acquittal and dismissal of the indictment, made at the close of the entire case, because the United States wholly failed to prove the allegations contained in said indictment against this defendant.

ASSIGNMENT OF ERROR NO. 10.

Error of the Court in overruling the motion of this defendant, Thomas Henry, Robinson, Jr., to arrest the jury verdict and the judgment entered thereon because:

(a) The indictment does not state facts sufficient to constitute an offense against the United States;

(b) The indictment does not contain such a statement of the facts and circumstances as to inform the accused, this defendant, of the specific acts with which he is charged;

(c) The indictment upon which this defendant was tried contains such bare, naked allegations as not to meet the requirement that an indictment must fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; and said indictment does not

Assignment of Errors

charge with precision and certainty every ingredient of the crime, of which it is composed, with accuracy or clear allegations;

(d) The indictment is not free from ambiguity, and leaves doubt in the mind of this accused of the exact offense intended to be charged, and does not apprise this defendant what he is called upon to meet;

(e) The indictment, although alleging that Mrs. Stoll was not released unharmed, does not allege or charge any specific physical or bodily injuries or harms, and this defendant did not know, and could not know, what to expect or what defense he would be called upon to make to such a bare, naked, unexplained, allegation; because such allegation could have meant Mrs. Alice Stoll was injured or harmed in any number of ways, or to any number of extents or degrees, and such allegation was, and is, susceptible of any number of meanings, constructions, interpretations, and is not clear or specific;

(f) The offense charged and alleged in said indictment is duplicitous;

(g) The indictment is wholly lacking in accurate and clear allegations, and does not, and did not, warrant or permit the introduction of any evidence to sustain the allegation that Mrs. Alice Stoll was not liberated unharmed.

ASSIGNMENT OF ERROR NO. 11.

Error of the Court in overruling this defendant's Motion and Grounds for New Trial, being grounds 1 to 28 inclusive, which materially and substantially affected, and do affect, his substantial rights.

ASSIGNMENT OF ERROR NO. 12.

Error of the Court in overruling this defendant's Additional Grounds in Support of Motion for New Trial, being additional grounds 29 to 41 inclusive, which materially and substantially affected, and do affect this defendant's substantial rights, to his prejudice.

*Assignment of Errors***ASSIGNMENT OF ERROR NO. 13.**

Error of the Court in accepting the verdict and recommendations of the jury, rendering judgment thereon, and in imposing the death penalty upon this defendant, because the entire proceedings, trial, verdict, judgment and sentence imposed were, and are, illegal and in violation of this defendant's substantial, legal, and Constitutional rights, and because this defendant's liberty and his life have been deprived him without due process of law.

ASSIGNMENT NO. 14.

The Court erred in refusing to give instructions requested by the defendant, Thomas Henry Robinson, Jr.; and the Court erred in charging the jury and when so charging the jury made unnecessary, prejudiced, biased, impassioned, and swaying remarks to the jury, which swayed and influenced said jury to return a verdict of guilty, with recommendation of death.

ASSIGNMENT OF ERROR NO. 15.

Error of the Court in refusing to peremptorily instruct the jury to return a verdict of "Not Guilty" and refusing to peremptorily enter an order of acquittal, because the Government failed to prove one or more of the necessary facts and elements in the commission of the alleged offense, in that the Government wholly failed to prove by any competent, relevant, or admissible evidence that Mrs. Alice Stoll "was not liberated unharmed"; further, because the verdict and judgment and sentence are inconsistent with that part of the Court's charge (page 2075, Tr. Evidence) in the following language:

"A failure on the part of the Government to so prove any one of the necessary facts in the commission of the alleged offense would require that you return a verdict of not guilty."

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The indictment in this case is so defective as not to warrant or permit the introduction of any evidence upon the question of whether or not the kidnaped victim was liberated unharmed; and, there being a total failure of proof on the part of the Government of that essential and necessary fact and element in the commission of the alleged offense, an acquittal and dismissal of the indictment was required, and the Court erred in failing to peremptorily acquit this defendant, and erred in submitting this case to the jury.

ASSIGNMENT OF ERROR NO. 16.

Error of the Court in admitting testimony of witnesses:

Alice Stoll (pp. 517 to 523, Tr. Ev.)
 Berry V. Stoll (p. 712 Tr. Ev.)
 Dr. Harry Frazier (pp. 596 to 600 Tr. Ev.)
 Mrs. Douglas Potter (p. 672 Tr. Ev.)
 Fowler Woollet (p. 1324 Tr. Ev.)

on the question of Mrs. Alice Stoll's physical condition at the time of her release from alleged captivity and subsequent thereto, to all of which such testimony the defendant at the time objected and excepted, and still excepts, because this was not, and is not, a capital case; because the indictment is too vague and indefinite to permit testimony on that question; and because the Court erred in treating it as a capital case and instructing the jury that they might recommend the imposition of the death penalty. And the Court further erred in accepting from the jury a death-penalty recommendation; and the Court further erred in imposing upon this defendant the death penalty. In support of such assigned errors, the defendant-appellant says that:

(a) The indictment charges in bare, naked, uncertain, ambiguous, uncertain, and unaccustomed language that this defendant "DID NOT LIBERATE HER UNHARMED", but said indictment wholly and completely failed, and does, fail, to allege or charge any specific phy-

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sical or bodily injuries or impairments with which Mrs. Alice Stoll might have been suffering or enduring or in existence at the time of Mrs. Stoll's alleged release from captivity.

(b) Such bare, naked, unspecific allegation was, and is, susceptible of any number of meanings, interpretations, and constructions.

(c) It was error to permit this defendant to be tried, convicted, or sentenced under such a fatally defective indictment and thus be deprived of his life and liberty in contravention of this defendant's legal and Constitutional rights.

For such objections to the introduction of such testimony on the physical condition of Mrs. Stoll upon her alleged release from captivity, see PP. 517 to 523 inclusive of the Transcript of the Evidence.

Beginning on page 517, Tr. Evidence, the following transpired:

"Q. What was your condition, Mrs. Stoll, at the time you left that apartment?

"Mr. Hogan: Wait just a minute now. If Your Honor please, that is highly objectionable in view of the fact that the condition of this indictment—I would like to be heard on that, if Your Honor please.

"The Court: All right, I will be glad to hear you. You may step up here to the bench.

(Conference between the Court and counsel.)

"The Court: Will the Reporter read the question?

(The last question written above was read.)

"The Court: Do you mean physical condition?

"Mr. Brown: Yes, Your Honor.

"The Court: Do I understand that there is an objection to that?

"Mr. Hogan: There is an objection to the answer to that question, and my objection is based upon this point. The indictment in this case is an indictment drawn in the language of the statute, or statutes, to-

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wit: Sections 408 and 408 b, Title 18, of the United States Code Annotated.

"The concluding sentence or phraseology of page 3 of this indictment, just before the phrase, 'Against the peace and dignity of the United States, and contrary to the form of the statutes in such case made and provided', is the term 'and did not liberate her unharmed.'

"Now, it is the contention of the defendant that that term, 'and did not liberate her unharmed', in the language of the statute itself is not sufficient in the eyes of the law with which to notify this defendant what issues upon that subject he is called upon to meet in the proof of this case.

"An indictment is always most strictly construed against the drawer of the indictment. That is a general proposition of law and I submit it does not need any elaboration upon. That is a term which we are all familiar with, and if there need be any question about that, I am prepared to furnish the Court with ample authorities on that.

"There is another generally known proposition of law—that there cannot be introduced evidence where there are no pleadings to support it. Evidence without pleadings is just as unavailing as pleadings without evidence.

"While the term 'and did not liberate her unharmed', as I have said a moment ago, is in the language of the statute, it is not such a term as is generally understood by the courts or by those whose duty it is to interpret them; and certainly it may not be left to speculation as to what that term may mean or may include.

"The term 'And did not liberate her unharmed' could mean that she had the slightest pin-scratch on her arm. It could mean that every bone in her body was broken. It could mean that she had a black eye.

"The Court: Is there anyone in a better position to know what her condition was than the kidnaper? Was he taken by surprise when the indictment charged

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that she was not liberated unharmed? Whoever the kidnaper was knows exactly what the facts were there.

"Mr. Hogan: He can only know what the facts were by what the indictment charges. When he comes into this court or any other court on an indictment, he cannot know what the proof is going to be introduced as to the nature and extent of the injuries.

"The Court: The kidnaper was there and knows what happened.

"Mr. Hogan: That is granted, Your Honor.

"The Court: Then he ought to know what the testimony is going to be.

"Mr. Hogan: But the burden should not be on him to overcome a defect in the indictment. The burden is upon the government of the United States to draw and present him with a complete indictment in the beginning, so that when he comes into court he is prepared to meet what is set out in that indictment.

"The Court: I think a motion for a bill of particulars might have been asked for by you. If you think the term is ambiguous, if you want to know in what respect she was harmed, whether it was a broken arm or a scratched face by a pinpoint, you may have asked for a bill of particulars, but I don't think you need one in this case.

"Mr. Hogan: But my point is—I surmise that the Court, in taking the contrary view a moment ago was going to say to me that that could have been gotten by a bill of particulars and, meeting that situation, I will refer the Court to a case which said that would be a futile and useless thing, and would not serve to make an otherwise imperfect indictment any better than it was in the very beginning.

"The Court: Of course, if an indictment is imperfect, a bill of particulars doesn't cure it; but I have no view that the term 'liberate her unharmed' is so ambiguous and so confusing that the ordinary person does not know what it means. It is very plain language. We know what 'liberate' means; and we know what 'unharmed' means, and to say that we have got to de-

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fine that more closely seems to me to be a rather strained point of view.

"Mr. Hogan: It is not what Your Honor, the Court, might understand that term to be, but it is what the defendant might understand that term to be, or what he may expect to meet.

"The Court: Well I think the defendant is an ordinarily reasonable man, and would have no difficulty in understanding what that term means.

"Mr. Hogan: Now, I want to point out, further, in my argument that the indictment charges further in the language of the statute, that this defendant did knowingly transport and cause to be transported in interstate commerce a person who had been unlawfully seized, kidnapped and abducted.

"Well, now following the line of view that the Court has expressed about this term, 'liberate unharmed', I submit that there is not anybody in this court room who does not have a generally fair idea of what that term 'interstate commerce' means, but yet the legislature which passed that law came along and used up sections 408 and 408b of Title 18 to describe what is meant by the term 'interstate' or 'foreign' commerce. Now the legislature did not give any definition of the term 'liberated unharmed' or 'not liberated unharmed'. Therefore, the term being a new term and certainly came into being following the passage of this law which was passed in 1932 and amended in 1933, that term has never had much opportunity in the courts to be defined.

"Therefore, if the courts have not had an opportunity to define it, certainly the defendant, a layman, could not understand what the term means or covers in the indictment.

"The Court: I understand your point, Mr. Hogan, and I believe on account of your being counsel in this case it was your duty to make it, and you have made it; and to argue it, and you have argued it. It is highly technical from my point of view and I don't think that I can maintain it.

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"You may take the motion as overruled and make your exception.

"Mr. Hogan: That is all right—I mean, it is not really all right, but it is all I can do about it; and I will have to reserve my exceptions.

"Q. Now, Mrs. Stoll, at the time you left that apartment—

"Mr. Hogan (Interrupting): Now Mr. Brown may I interrupt? I don't want to be obnoxious and every time a question about her injuries might be brought up to interpose an objection, but I would like to have it understood that any time any question of her injuries or any extent of her injuries or what she claims her injuries to have been at the time she was liberated is brought up, I would like to have the record note my objection to that.

"The Court: I understand that it is based on the same point that you have just made?

"Mr. Hogan: On the same point.

"The Court: But if you have any additional points to make, they should be made. Unless an additional point is made, we will understand that it is based on the same point that you have just argued without having to renew your objection.

"Mr. Hogan: Yes, sir, without my taking an exception each time.

"The Court: And likewise overruled, and likewise you are excepting.

"Mr. Hogan: That is right.

(P. 523 Tr. Ev.)

"Q. All right, Mrs. Stoll, will you tell the jury what was your physical condition at the time you left that apartment on October 16, 1934?

"A. My head was still thickly clotted with blood and I was in a very weakened condition. I could hardly walk a block.

"Q. What was the condition of your mouth?

"A. I still had raw sores on my lips from the adhesive tape that had been put on and off so much."

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(Mrs. Stoll did not say such injuries were inflicted upon her by this defendant.)

For rulings on such objections, and exceptions which were reserved, see likewise PP. 517 to 523 inclusive of the Transcript of the Evidence.

ASSIGNMENT OF ERROR NO. 17.

There was no evidence whatsoever that any of the injuries or evidence of injuries claimed to have been in existence and being suffered by Mrs. Alice Stoll at the time of her alleged release, and about which the Court erroneously admitted evidence, were inflicted upon Mrs. Stoll by this defendant, or that they were the result of any act done by this defendant or committed by this defendant upon the person of Mrs. Alice Stoll; and because of such total lack of evidence the Court erred in charging the jury that they might recommend the imposition of the death penalty. And even if Mrs. Stoll was shown to have injuries or evidence of injuries at the time of her alleged release, there was no evidence whatsoever by any witness which connected, or even tended to connect, her then condition to this defendant or to any act which this defendant, allegedly, previously had committed upon or against Mrs. Stoll.

Because Mrs. Stoll (P. 523 Tr. Evidence) merely related what her physical condition was upon release without saying, or even attempting to say, who was responsible for her then condition.

Because Dr. Harry Frazier (PP. 596-600 Tr. Ev.) merely detailed her injuries, but was not permitted by the Court to say what caused, or what could have caused the conditions he described, and Dr. Frazier attributed to Mrs. Stoll many more injuries than she, herself, claimed to be suffering from at the time of her alleged release, and it would be pure speculation how she received any of the injuries Dr. Frazier found her to be enduring.

Because Mrs. Douglas Potter (p. 672 Tr. Ev.) was permitted, over objection, to detail Mrs. Stoll's condition, but which condition was not ever connected up to, or at-

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tributed to, this defendant or to any acts committed by this defendant upon the person of Mrs. Stoll.

Because Berry V. Stoll (p. 712 Tr. Evidence) was likewise permitted, over objections, to detail such physical condition of Mrs. Stoll, but which condition was likewise never connected up to anything done by this defendant.

Because Fowler Woollet (p. 1324 Tr. Ev.), though detailing that Mrs. Stoll was highly nervous, did not connect up her then condition with this defendant.

Because no witness whatsoever connected up Mrs. Stoll's claimed physical condition upon release with any acts of commission or omission to this defendant, and it was grave and prejudicial error for the Court to permit the jury to consider any such evidence of Mrs. Stoll's physical condition on release.

It was likewise grave and prejudicial error for the Court to speculate on how Mrs. Stoll sustained the injuries which, it was alleged, were in existence upon her release.

It was grave and prejudicial error for the Court to accept from the jury a death-penalty recommendation and to impose the death penalty upon this defendant when there was a complete lack of any competent, relevant, material evidence attributing to, or connecting up, this defendant the responsibility for the physical condition of Mrs. Stoll upon her alleged release from captivity.

ASSIGNMENT OF ERROR NO. 18.

Error of the Court in accepting the jury's recommendation that the death penalty be imposed, and in imposing the death sentence upon this defendant, based upon what was said by this defendant of his relations with Mrs. Stoll, which the Court considered as untrue, because:

(A) The Court (pp. 2144 and 2145) stated its views on that question in the following language:

"It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the

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defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty. That is only my view, but from my experience and from my own thought in the matter, I doubt very much, even if they had made such a recommendation, the Court would have considered it, except for the testimony on the part of the defendant, which I am accepting as untrue as the jury so found it and, as I have stated, at the time I thought the government's evidence overwhelmingly supported their contention in the matter."

(B) The quoted statement from the Court establishes conclusively that the Court believed the jury recommended the death penalty because of defendant's testimony concerning relations with Mrs. Stoll, and that the Court believed such testimony to be untrue and, because it so believed, accepted the jury's recommendation and imposed the death sentence.

(C) The jury and the Court recommended the death penalty, and imposed the death penalty, respectively based upon what this defendant said of and concerning his relations with Mrs. Stoll, rather than what he was charged with doing in the indictment, for which actions of the Court and the jury there is no justification, and the Court and the jury have erred to the great prejudice of this defendant; and the verdict of the jury, the judgment of the Court, and the sentence imposed upon this defendant are unlawful.

(D) This defendant was not indicted for telling an untruth concerning his relation with Mrs. Stoll, but rather for a violation of section 408-a of title 18, U. S. C. A., and such a conviction based upon a belief that this defendant told an untruth concerning his said relations with Mrs. Stoll and such a judgment and imposition of sentence based upon such a belief are at total variance with the accusations contained in the indictment in this case.

(E) The defendant was convicted and sentenced for what he said rather than what he did or is charged with

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doing by the indictment, and such conviction and sentence are unlawful and the result of bias and prejudice of the jury and of the Court. All of the foregoing to the great prejudice of this defendant.

ASSIGNMENT OF ERROR NO. 19.

The sentence imposed upon this defendant is too harsh and unjustified, and wholly out of proportion to the weight of the evidence. All of which greatly prejudiced this defendant's substantial rights, and all of which contravenes and does violence to this defendant's Constitutional rights.

ASSIGNMENT OF ERROR NO. 20.

Caustic, highly inflammatory, unwarranted, and incompetent remarks and argument to the jury by the District Attorney and Assistant District Attorney, which were calculated to, and which did, unreasonably inflame and prejudice the jury against this defendant.

Remarks of Assistant District Attorney Inman:

(pp. 1973 and 1974 Tr. Ev.)

"Consider these facts. Consider this crime. Consider the viciousness of it. Consider the punishment that should be meted out. The Court will advise you that you act in an advisory capacity; that if you return a verdict of guilty and recommend a penalty of death, that will be advisory and then the Court will then determine in his own wisdom and in his own mind what the penalty shall be.

"If you return a verdict of only, 'We the jury find the defendant guilty', without making a recommendation, then you have tied the hands of this Court. The Court then has no power to impose the death penalty even if he concluded it should be imposed. Return this case to this court giving to the judge of this court the power to, in his wisdom, impose any penalty that he thinks should be imposed. Do that by returning to this

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court a verdict, 'We the jury find the defendant Thomas Henry Robinson, Jr., guilty, and recommend punishment by death.' "

Because such remarks greatly influenced the jury and caused the jury to be swayed into recommending the imposition of the death penalty.

Remarks of District Attorney Brown:

(p. 2063 Tr. Ev.)

"I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll what she would probably have to face. I told her that I didn't know it, but I suspected it. I can see the horror and the disgust and the loathing that came over that little woman's face that night. That had never occurred to her before. She turned to me finally and said, 'Someone has to do it. I might as well be the one.' And so, I put her on that stand. You saw her, how shaken she was. You heard her story. If I have ever heard a truthful story, that was one."

Because such remarks had no basis in evidence, there being no evidence upon that; because purely hearsay; and because such remarks were calculated to, designed to, and did, have a telling, swaying and decisive effect upon the jury as a whole, which was reflected in their verdict, and because when said remarks were being made juror Will Lee Mattingly was so affected that he shed tears, and because said Will Lee Mattingly was foreman of the jury which returned the verdict in this case, all of which materially affected the substantial rights of this defendant, to his prejudice.

Remarks of District Attorney Brown:

(pp. 2065 and 2066.)

"We were stymied how to find a person named Allen, how to find some people named Palmer. When

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there was, oh, so little time left. So we started out that night to work, and we finally found some people named Palmer had operated a tourist camp in Nashville. We checked there and found they lived in Atlanta. We found a man named Allen that had operated it now lived somewhere in the Portland Avenue section of Louisville. That's all we had to go on. A good woman's reputation opens all doors. When we explained what we were up against to the people interviewed, we found a response that to me was simply amazing. On the telephone, I had no power to bring Mr. and Mrs. Palmer up here from Atlanta, over the telephone, no power at all. They were busy people, they were people of affairs, they had their own business in Atlanta, and here I, some person they had never heard of before, when the F. B. I. had finally located them, on the telephone, asking that they come, 'I can't, Mr. Brown. We are busy.' 'You must come. It will help save a good woman's reputation.' These people asked no more. They said, 'We will come. We will come on the first train, and we will stay there, if we can save that woman.' And so we found the camp known as the Beech Grove tourist camp was not even in existence at the time this vile story was told."

Because said statement had no basis in evidence, and was, and is purely hearsay, and prejudicial to this defendant's substantial rights; and because made to inflame and prejudice the jury and because said remarks did so inflame and prejudice said jury against this defendant.

Remarks of Asst. District Attorney Inman:

(p. 1969 Tr. Ev.)

"The tourist camp where the sign is out front—the place where he said he took her, and the evidence shows, Members of the Jury, that that was a deliberate and diabolical lie, and it cannot be branded anything else. The place was not there. The cabins were not there. The first brick purchased to build those cabins was August 26, 1931, and since last Monday

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when the defendant took that stand and told that diabolical lie, the Agents of the FBI have been able to produce here in this court records and witnesses—records of the brick company that furnished the brick;

(p. 1970)

“He told you last Monday that he took Alice Stoll on two occasions to a cabin that they rented at the Beach Tourist Camp and those acts of intimacy took place, he told you, at the Beach Grove cabin. That proved that he was a liar on that occasion as he has on other occasions,”

(p. 1973)

“As he sat there he told you what has been proven to be a diabolical lie, you saw he didn’t bat an eye and you can reasonably assume from that, that having told one, without any compunction told a lie designed to serve his aim and to tear down the reputation of Mrs. Stoll, having seen him tell that lie, having heard him as he told it, and having seen the proof that it could not be true, the reasonable inference is that there is no reason to believe anything this kidnaper says in his own behalf.”

ASSIGNMENT OF ERROR NO. 21.

Unfair comments on the testimony by the Court, which prejudiced the jury and influenced the jury to find this defendant guilty and to recommend the imposition of the death penalty (pp. 2076-2083 Tr. Ev.) because such unfair comments were designed to, and did, destroy this defendant’s defense that Mrs. Alice Stoll had not been unwillingly transported in interstate commerce after having been held, allegedly, for ransom or reward; and because it destroyed the defense that Mrs. Stoll was not in a harmed or hurt or injured condition at the time it was claimed she was released from captivity; and because such comments unduly and unfairly stressed to the jury that

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this defendant admitted writing a typewritten letter sent to the intermediary which started with the sentence: "I am the kidnaper of Alice Stoll"; and because the court unfairly commented:

(p. 2083 Tr. Evidence)

"On this disputed question of fact, the evidence in my opinion is overwhelmingly in favor of the Government's contention that the transportation from Louisville, Kentucky, to Indianapolis, Indiana, was unlawful and against the will of Alice Stoll."

because such comments not only stressed that there had been an unlawful transportation, but unfairly stressed that defendant had admitted being the author of a letter which admitted that this defendant was the kidnaper of Alice Stoll; and because such comments were not only unfair but were unwarranted because the Government failed to satisfactorily, or at all, prove that any transportation of Alice Stoll in interstate commerce took place after Alice Stoll had been held for ransom or reward.

Unfair comment of the Court upon this defendant's insanity plea and upon this defendant's medical expert witnesses, Drs. Crice and Solomon, not being members of the Jefferson County Lunacy Commission, because such comments were designed to, and did, destroy and tear down and render ineffective this defendant's insanity plea and the weight of the testimony of Doctors Thomas J. Crice and Leon L. Solomon on the issue of this defendant's insanity; and because the Court went to an unreasonable length to comment upon bits of the testimony bearing on this defendant's insanity and incapacity to commit the offense charged in the indictment (pp. 2089 to 2095 Tr. Evidence).

ASSIGNMENT OF ERROR NO 22.

Error of the Court in charging the jury that it was necessary for them to give further consideration, in case they found defendant guilty, to whether or not the jury

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should recommend punishment by death, because this was not, and is not, a capital case; and, even though it be decided it is a capital case, there was no competent evidence, or any evidence, tending to show that Mrs. Alice Stoll was suffering from any injuries, upon her release from captivity, that had previously been inflicted upon her by this defendant. Said charge is as follows (pp. 2094-2097 Tr. Evidence):—

“Your first duty, members of the jury, will be to attempt to reach a verdict in this case of either guilty or not guilty. If your verdict is not guilty, it should read, ‘We, the jury, find the defendant not guilty’, in which case your deliberations will cease and you will return such verdict into court. If, on the other hand, it should be one of guilty, then it will be necessary for you to give further consideration as to whether or not the jury shall recommend punishment by death. I direct your attention again to the provisions of the federal statute controlling this phase of the case, which reads, ‘shall upon conviction be punished, first, by death, if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if prior to its imposition the kidnaped person has been liberated unharmed.’

“In the federal courts, the sentence following a verdict of guilty is fixed by the court within the limits provided by the applicable statute and not by the jury. This applicable statute in the present case still vests that duty in the court, but it also provides that the jury may, upon finding a verdict of guilty, recommend punishment by death under certain conditions as hereinafter referred. If no such recommendation is made by the jury, the court cannot impose a sentence of death. If such a recommendation is made by the jury, it is not binding upon the court, but will, of course, be given careful and serious consideration by the court in imposing sentence. Keep in mind, therefore, that if your verdict should be one of guilty, that you have the further duty of deciding whether or not you shall

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recommend to the court punishment by death. Whether or not such a recommendation should be made calls for an exercise by the jury of discretion and an evaluation of mitigating circumstances. It would be your duty to determine whether the defendant, in view of all the circumstances surrounding the commission of the crime, merited the death penalty. In exercising this privilege whether or not such a recommendation should be made, you are not bound by rules of law, but will make your own appraisal of the character of the conduct of the defendant as evidenced by his acts which were related to the commission of the crime with which he is charged.

“Also keep in mind that you cannot recommend punishment by death if the kidnaped person has been heretofore liberated unharmed. The kidnaped person in this case was Mrs. Alice Speed Stoll. She has been heretofore liberated by the kidnaper and returned to her home. But this still leaves for your decision whether or not she was liberated unharmed. In considering and deciding this issue of fact, I instruct you that the statute, reasonably interpreted in the light of its purpose, refers to the condition of the kidnaped person at the time of her release. It bars the death penalty and also any recommendation by the jury to that effect if the kidnaper has released the kidnaped person unharmed, even though the kidnaped person may have received injuries during captivity from which she had recovered at the time she was liberated.

“Accordingly, if your verdict is one of guilty, and upon consideration of the question of whether or not any recommendation of punishment by death shall be made to the court, it is necessary for you to first decide whether or not Mrs. Alice Stoll was liberated by the kidnaper unharmed. The word unharmed will be given by you its usual and ordinary meaning attributed to it in the ordinary use of the English language. It means not harmed by the kidnaper during the commission of the offense or while in the custody

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of the kidnaper prior to liberation by him. The usual and ordinary meaning of the word harmed is hurt, or injured, or damaged. If you find that Mrs. Alice Stoll was liberated unharmed by the kidnaper, you cannot recommend punishment by death even though your verdict is one of guilty. If on the contrary you find that Mrs. Alice Stoll was not liberated by the kidnaper unharmed, you then give further consideration to whether or not in your judgment and discretion you decide to recommend punishment by death in accordance with the instructions hereinbefore given to you.

"If your verdict is one of guilty and you decide to recommend punishment by death, your verdict should read, 'We, the jury, find the defendant guilty and recommend punishment by death.' If your verdict is one of guilty and you decide to make no recommendation, your verdict will read, 'We, the jury, find the defendant guilty', and no more. Any verdict that you may reach in this case, one of not guilty, one of guilty without recommendation, or one of guilty with recommendation, must be a unanimous verdict, that is, must be agreed upon by all twelve of your number. It will be signed by one of your number whom you designate as your foreman."

Because such instruction or charge is the vehicle which enabled the jury to recommend, and the Court to impose, the death penalty upon this defendant, and because such instruction was unwarranted, and unjustifiably given to the jury.

ASSIGNMENT OF ERROR NO. 23

Error of the Court in admitting, over the objection of defendant, and to which exception was duly taken, evidence of the commission of prior crimes by this defendant, and of the fact that this defendant was indicted for such prior crimes, or, if not indicted, that he was charged with some prior offenses (pp. 1172 to 1181 Tr. Evidence), be-

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cause such evidence was incompetent, irrelevant, and highly prejudicial, and because evidence of other offenses is never admissible upon the trial of the offense being tried; and, because even though such evidence be held to be admissible to establish a plan or scheme, it was too far removed in point of time to be admissible, and because such evidence does not establish that this defendant ever before transported in interstate commerce a person who had been kidnaped or held for ransom or reward, and to be admissible, if it is, as showing the commission of a similar crime, the other offenses must be identical with the crime charged in the indictment, and closely connected up in point of time, which they were not. (See also pp. 1204 to 1207 Tr. Evidence).

(p. 1173, Tr. Evidence):

“Q. Wasn't that a device upon the part of yourself and your father and your family to escape criminal prosecution for the robbery of the home of Mrs. C. C. Wagner and Mrs. Mary C. Lamb?

“Mr. Hogan: I object to that, if Your Honor please.

“The Court: Members of the Jury, the question refers to a possible commission of another offense by this defendant.

“Ordinarily evidence of another offense at a prior time is not competent for a jury to consider because the fact that a man may have committed another offense is not evidence that he committed the offense charged. But in certain instances there are exceptions to that rule, and where collateral issues come into play and are before the jury for decision, such evidence may be considered on collateral issues.

“Now, the question was asked, and will be permitted to be asked and to be considered by you, and the answer thereto, with reference to this collateral issue as to any possible motive for the insanity proceedings; and it will be considered by you exclusively on that point, and it will not be received in evidence on any other point; but I will let it be admitted as bearing on that question which was directed to the

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witness.

"Mr. Hogan: ⁷Your Honor, I think I should state the basis of my objection. My objection is based upon the ground that it is improper to prove the commission of any prior crime other than the one for which he is on trial.

"The Court: The rule which you state is the generally accepted rule which I have just told the jury about and I repeat, there are exceptions to that where that evidence can be introduced bearing on a collateral issue that is before the jury and it will be considered solely as bearing on the question as directed to the witness.

"Mr. Hogan: Exception.

"Q. Now, I will ask you, Mr. Robinson, if in March, 1929, you went to the home of Mrs. Mary C. Lamb, at that time residing at 2413 Jones Avenue in Nashville, Tennessee; that you called at her residence; that you were met at the door by her maid; that you exhibited a badge to the maid, stating that you desired to see Mrs. Lamb; that you told Mrs. Lamb that you were a Deputy Sheriff; that you informed Mrs. Lamb that you wanted to search the house for illegal liquor; that Mrs. Lamb protested your action and desired to call her husband on the telephone; that you denied this request of Mrs. Lamb; and that Mrs. Lamb and her maid were compelled to be seated in the front room while you proceeded with your search; that at the time you entered that house you had a gun in your belt; that you searched the home of Mrs. Lamb, particularly the bed room; that during the time of the search the telephone rang on two separate occasions; that you did not permit Mrs. Lamb to go to the telephone but you instructed the maid to answer and tell the person calling that Mrs. Lamb was too busy to talk; that you on that occasion made a thorough search of the residence; that you did not make a thorough search of the residence but confined your search to the bed room; that upon completing the search you demanded to Mrs. Lamb to know where her car was parked; that you

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demanding of her her keys; and that you ordered Mrs. Lamb and her maid to go to the attic; that you drove away in that car and you took with you the majority of the jewels of Mrs. Lamb and her mother, Mrs. Elmo Love Gee. Is that correct?

"A. That is correct in most details. I did not have a gun on my belt and that I went into the house to obtain whiskey—

"The Court (interrupting): Is that correct or incorrect?

"Witness: I said it was correct in most details except for the gun and that I went into the house for any whiskey that I thought was in there or that was the primary object in going in.

"Q. And that thereafter you and your father, Thomas H. Robinson, Sr., requested Mr. Elmo Love Gee, husband of the woman whose jewelry you took and the father of Mrs. Lamb, not to prosecute on those charges, that full restitution would be made—

"Mr. Hogan (Interrupting): Now that is objected to on the basis of what his father might have done.

"Mr. Brown: Well I am asking him if he knows.

"The Court: It is just directed to what he knows.

"A. I do not recall any statement my father made to Mr. Gee—no.

"Q. Were you a Deputy Sheriff at that time?

"A. No, I wasn't.

"Q. And I will further ask you if that in March in 1929 that you did go to the home of Mrs. Nellie White Wagner at that time residing on Woodlawn Drive, in the City of Nashville, Tennessee; that you represented yourself to Mrs. Wagner again to be a Deputy Sheriff; that you exhibited to Mrs. Wagner a fake search warrant; that you told Mrs. Wagner that you were going to search the house for whiskey and that Mrs. Wagner objected; whereupon you seized her forcibly as she was attempting to call her husband over the telephone; that then you locked Mrs. Wagner and her maid in a room; that you searched her house and stole jewelry to the value of several thousand

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dollars; that while you were searching the house the telephone rang; that you did not permit Mrs. Wagner to answer the telephone but instructed the maid to do so; and that you told the maid to inform the person calling that Mrs. Wagner was too busy to answer the telephone; that at the time you were in Mrs. Wagner's home that you demanded to know of Mrs. Wagner concerning certain wires about the premises; and that you were told that one wire led to the servants telephone; and that the other was an electric wire to the garage. Didn't that happen?

"A. There was nothing said about any wires.

"Q. Oh, then the only things that didn't happen—

"A. (Interrupting) Everything else is substantially correct, that is true. But nothing was said about any wires or any telephone or anything else.

"Q. Now then I will ask you if some months later, to-wit, June, 1929, you were not identified by Mrs. Wagner and Mrs. Lamb as the person who had perpetrated the crime in their home and, as a result of the arrest and indictment, that you, together with members of your family, didn't cook up this insanity scheme to avoid going to the penitentiary?

"A. That is not true.

"Mr. Hogan: That is objected to.

"The Court: The objection on the same ground as before, and the jury will be told again that this evidence is received on the collateral issue which is involved in this case, and not as evidence that he committed the particular crime with which he is charged here; but it can be considered by the jury on the collateral issue which has been raised by the defendant's testimony.

"Mr. Hogan: Exception.

"Q. I will ask you if in May, 1929, you were not indicted by the Grand Jury of Davidson County, Tennessee, charging, in legal language, the offense that you have heretofore testified about?

"A. That's correct.

"Q. And if it wasn't after that for the first time

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that you had this lunacy inquest that you testified about yesterday?

"A. Yes, it was subsequent to the offense charged in that indictment.

"Q. The lunacy inquest was.

"A. Yes.

"The Court: The jury will keep in mind that the evidence as to that indictment is limited to the same issue that I indicated before, not to the main issue as to whether or not this defendant is guilty of the offense charged in this case.

"Q. Now then, is it not true that an indictment was returned against you involving, in legal language, the offense that you have testified about that was committed by you at the home of Mrs. Lamb, and wasn't that also prior to the time of the lunacy hearing in the Criminal Division of the Davidson Circuit Court?

"A. I thought that was in the same indictment. I may be mistaken.

"Q. Well, it was prior.

"The Court: The same instructions to the jury on that question.

"Q. Now then, I will ask you if as a result of these indictments and as a result of the lunacy inquest, you were not committed to the criminal ward of the Central State Hospital.

"A. That is correct.

"Q. You were not very well pleased there, were you?

"A. Why, it wasn't a question of whether I was. My family wasn't. I wasn't getting the proper kind of treatment there.

"Q. And you desired to be removed from the criminal ward of Central State Hospital to another ward, did you not?

"A. No. I think I wanted to—at least, my father wanted for me to get some fresh air and sunshine and the proper treatment that was indicated for the type of insanity that I had.

"Q. Now then, I will ask you—you have testified

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that there was a second lunacy hearing in the spring of 1930 following which you were transferred to the Western State Hospital at Bolivar, Tennessee.

"A. That is correct.

"Q. Now, as a matter of fact, Mr. Robinson weren't the criminal charges nolle prossed against you on the 9th day of May, 1930, and it was a result of that nolle pross that you could no longer be held in the criminal ward, but as a result of that you could demand to be transferred to the Western State Hospital at Bolivar?

"Mr. Hogan: Now, he wouldn't know about that.

"Mr. Brown: Well, if he does know.

"A. Well, the only thing that I recall about that is the State of Tennessee agreed to nolle pross the criminal charges so that I could receive the proper treatment in another institution, which included fresh air, sunshine, and exercise, which I wasn't getting in the Central State Hospital.

"Q. But you were transferred to the Western State Hospital at Bolivar.

"A. I was."

AND THE ADMISSION OF such testimony was further error because, while the Court ruled that it was being admitted upon the collateral issue only of insanity, its admission was but a subtle means of the Government getting before the jury otherwise incompetent evidence of the commission of prior offenses by defendant, which admission of such evidence prejudiced and influenced the jury against this defendant; to the admission of such incompetent evidence, the defendant at the time objected and excepted, and still excepts.

ASSIGNMENT OF ERROR NO. 24.

Error of the Court in admitting into evidence a letter dated July 1st, 1936, written by this defendant to Mr. Bates, while this defendant was an inmate of the Federal Prison at Leavenworth, Kansas, because said letter was written

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at a time when this defendant was presumably insane, and was insane; was written by this defendant before he had ever been legally arraigned; was written by this defendant at the suggestion of Warden Zerbst of Leavenworth Penitentiary and the prison psychiatrist; was written pursuant to, and in consideration of, inducements held out to this defendant; and was written by this defendant, while relying upon said promises and inducements, so that this defendant might be permitted to get out of the isolation section of the Leavenworth Penitentiary; and said letter was not written voluntarily. (pp. 1181 to 1189 Tr. Evidence); to the introduction of such letter and evidence the defendant at the time objected and excepted, and still excepts.

In that connection the following transpired:

"Q. I'll hand you a letter dated July 1st, 1936, and ask you if you wrote that letter and if that is your signature, and if everything on that letter isn't yours with the exception of the red underscoring which has been added apparently later.

"Mr. Hogan: May I see it?

"Mr. Brown: Yes, let him identify it. If he doesn't identify it, it won't be used.

"A. Why yes, I wrote that letter to Mr. Bates.

(At this point the letter was handed to Mr. Hogan for examination.)

"Mr. Hogan: Your Honor, I object to this letter because it is in the nature of a confession or admission, and it is certainly objectionable because he was insane and had been adjudicated insane and had never been restored, and an insane person cannot legally make any statement that is against his interest.

"The Court: That's one of the questions in this case, isn't it?

"Mr. Hogan: And it has not been brought out as to whether or not any promises were made to him, or if there were, what they were, or whether there were not.

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"The Court: I imagine the District Attorney will qualify the letter before it is introduced. He will have to, of course. I imagine if it is in the nature you say it is, I haven't read it, I don't know, but it seems to bear, at least, on the issue we have as to whether or not this defendant was sane or insane at that time. For the present I will admit it on that issue. Later it may be admissible on other issues, but it will be limited for the present, at least, along the discussion that we have had on other questions bearing on the issue of the defendant's sanity.

"Q. You wrote this letter to Mr. Bates yourself?

"A. I did, at the suggestion of the Warden of Leavenworth Penitentiary.

"Mr. Brown: I would like to read this letter to the jury: "July 1st, 1936. Dear Mr. Bates."

"Mr. Hogan: He hasn't yet qualified it, as to whether or not—

"The Court: All right. Ask him further questions, Mr. Brown.

"Q. Mr. Robinson, didn't you communicate with Mr. Bates without any solicitation from Mr. Bates, and if Mr. Bates at that time wasn't the Director of the Bureau of Prisons, and I will ask you further if you didn't communicate with him of your own free will and accord, attempting to gain the privileges and concessions outlined in this letter.

"A. That letter, as I stated before was written at the suggestion of Warden Zerbst at Leavenworth Penitentiary and the prison psychiatrist who at that time—I don't recall his name—he was the psychiatrist at Leavenworth.

"Q. Dr. Singleton?

"A. If I may be permitted to explain the circumstances surrounding that, I would be glad to.

"Mr. Brown: I submit it is certainly competent.

"Mr. Hogan: Now wait a minute. Let's see here. He said it was written at the suggestion of Warden Zerbst.

"The Court: You were not required to write it,

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forced or made to write it, were you?

"The Witness: I wasn't physically forced, Your Honor, but there were some inducements held out to me.

"The Court: What inducements?

"The Witness: I was at that time held in what is known as isolation in the Leavenworth Penitentiary and Warden Zerbst called me in his office and told me that as long as there was a question as to my insanity he couldn't take me out of isolation and give me a job in the regular run of the penitentiary, and he suggested that I write to the Director of the Federal Bureau of Prisons at Washington, who was then Mr. Bates, and explain to him—explain away this insanity angle in my case, and I did that and did everything in my power to convince Mr. Bates that I wasn't insane. Naturally, I wanted to overcome that stigma of insanity myself, it had always been a thing of disgrace to me and I wasn't—

"The Court: Well, at that time you did it because you wanted to do it, didn't you?

"The Witness: Yes, I wanted to get out of isolation and go to work in the penitentiary like the rest of them did.

"Mr. Brown: I submit the letter is competent.

"Mr. Hogan: Could you have gotten out of isolation if you hadn't written the letter?

"The Witness: Warden Zerbst stated that as long as there was any issue—

"The Court: Now just a minute. We are getting into hearsay again, what Warden Zerbst said.

"Mr. Hogan: It is certainly bearing on the issue—

"The Court: I don't care what it is bearing on. It is hearsay. We have been keeping hearsay out.

"Mr. Hogan: Well, if Your Honor please—

"The Court: All through the trial of this case, Mr. Hogan, you have objected every time the Government tried to get in hearsay testimony.

"Mr. Hogan: I certainly did.

"The Court: And the rule has been applied at your

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instance, and it is going to be applied in this instance, too. Hearsay, if it is inadmissible on the Government's part, it is inadmissible on your part.

"Mr. Hogan: I think what we should do then, is not to have this evidence before the jury, and let's have the question of the—

"The Court: I can't hear hearsay evidence any more than the jury can hear it.

"Mr. Hogan: No, but I mean as to whether this letter was written voluntarily or with some hope or promise of reward or immunity, because that bears directly upon whether a statement of any kind—

"The Court: I think the witness has testified that he wrote it because he wanted to change his condition. You were not promised any monetary reward of any kind, were you?

"The Witness: No, but I was promised this, that the prison psychiatrist, who as he said was Dr. Singleton, at that time told me that as long as there was any question as to my insanity I would never make parole.

"The Court: You were doing it to clear up the question of your sanity, weren't you?

"The Witness: Well, I was attempting to show that I wasn't insane because I wanted to make parole, and I also wanted to get out and go to work.

"Mr. Hogan: If your Honor please, I suggest that that's the hope they held out to him.

"The Court: Objection overruled.

"Mr. Hogan: Exception, please.

"The Court: I am telling the jury that I am admitting it at the present time as bearing on the defendant's sanity or insanity, not to be considered at the present time on any other issue.

"Mr. Brown (reading):

"Leavenworth, Kansas, July 1st, 1936.

"Dear Mr. Bates:

"Up until now I was not familiar with the fact that letters to your office should be sealed. I have pre-

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viously written both your office and the Attorney-General's office in the hope that you would review my case and find circumstances therein that would justify you in allowing me to remain in an institution nearer home rather than be sent to Alcatraz. Mr. Bates, I have only one thought in mind for a year or more, namely, if I were apprehended that I would offer no resistance, that I would go back and take my sentence like a man, do my best to merit clemency at sometime or other, maintain the new hold I have on life and be able some day to start again all over with the girl whom I love and whose actions since my apprehension should convince anyone that she loves me dearly.

" 'I have worked for various companies since I was fourteen years of age. This is my first conviction, and I have never associated with the underworld in any sense of the word. I understand that you are deeply interested in reform movements, and sincerely so, I am sure. I have this in mind. I am finished altogether with crime of any kind. The methods the Department of Justice used in my apprehension convinces me that it is impossible to beat the law. Figures will bear out the fact that crime does not pay.

" 'Mr. Bates, among my effects in Glendale, California, was a manuscript of a book I was writing previous to my crime. It was "The Getting of a Job, a Science." I have studied that problem carefully and am well informed on it. I would like to do this. Establish a placement bureau or at least teach a class here in the ways and means of getting a job. I believe I could help direct an inmate's efforts, once he is released, along certain well defined lines that would help him get a job. Most men are at a loss as to how to proceed to get employment. I believe such a plan would succeed somewhat to cut down the number of parolees who resort to crime again because of lack of employment.

" 'I would appreciate this or some similar opportunity to get into some constructive employment. I give my solemn promise that I will not abuse any

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privileges extended me.

“ ‘For your information, I would like to state this, that I am not a mental case, I have no psychosis, and that former decree of insanity was the result of my father imposing on his friendships. Also, I did not pose as a woman except on an occasion in Nashville as a disguise. I have no abnormal or homosexual tendencies, and am perfectly normal in that respect.

“ ‘I am very grateful for the opportunity I had of again seeing my mother and the girl I previously mentioned. Mr. Bates, she means everything to me. She has done more to help my return to normal living and thinking than anyone else. She is working in my behalf now, and it is to her that I will go to if and when I am released.

“ ‘I am conscious of the fact that I am requesting a lot, but I would like and so would she to have her name put on my correspondence list so that we may write one another and that she may visit me. I am to be immediately divorced from my present wife as we have long since ceased to mean anything to each other. My whole peace and happiness lies with this girl. This request to see her and to write her is unusual and must be referred to you, but so also are the circumstances in respect to her. May I have an expression from you?

Yours Sincerely,

Thomas H. Robinson, Jr.’ ”

“Q. Now, the girl to whom you were referring was the woman that has been previously testified to and identified in this direct testimony as Jean Breese, is it not?

“A. That is correct.

“Mr. Brown: I would like to introduce this as Government Exhibit No. 78.

(The letter referred to was handed to the reporter and filed with the record as Government Exhibit No. 78.) ”

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And because, further, said letter and said evidence was irrelevant, incompetent, and highly prejudicial, nad was improperly admitted.

ASSIGNMENT OF ERROR NO. 25.

The Court erred in overruling defendant's objection to the admission of the testimony of witness John P. Knowles, the Government's fingerprint expert, the objection being based on the ground that the fingerprints and the other evidence had not been connected up sufficiently to identify the defendant with what had been stated by that witness and other witnesses (pp. 955., 956 and 957, Tr. Evidence), and the Court erred in overruling defendant's motion to strike from the record and to exclude from the jury certain Government Exhibits mentioned in said motion and to strike from and exclude from the jury any and all exhibits to which said witness Knowles referred; and to strike and exclude from the jury all of the testimony of said witness Knowles and strike from the evidence and exclude from the jury exhibits 68-a, 68-b and 69, and the testimony of witness Richard E. Smith (Smith's testimony, pp. 973 to 977 Tr. Evidence) (Knowles' testimony pp. 949 to 969 Tr. Evidence); because the testimony of witness Knowles and the filing of the exhibits mentioned in said motion and all such exhibits to which said witnesses Knowles and Smith referred to, were made contingent upon and subject to witness Knowles connecting up and identifying any known specimens of fingerprints with those appearing on certain exhibits which had tentatively and conditionally been filed by the Government (p. 950 Tr. Evidence); and because there was a failure to so connect up or properly identify them, and more particularly because witness Smith (p. 974 Tr. Evidence) testified that the known specimens were the fingerprint impressions of Thomas H. Robinson, Jr., and because witness Knowles testified that the fingerprints on the exhibits and documents, about which he testified, could have been made by no other person than THOMAS H. ROBINSON (p. 962 Tr. Evidence), and that they were made by THOMAS H. ROBINSON, (who

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is a person other than defendant Thomas H. Robinson, Jr.); because the indictment returned in this case names Thomas H. Robinson, Sr., Frances Robinson and Thomas H. Robinson Jr. as the perpetrators of the crimes charged therein and the said testimony of said witness Knowles that said fingerprints could have been made by no other person than Thomas H. Robinson or that they were made by Thomas H. Robinson (pp. 954, 958, 959, 960, 961, 962, 964, 965, 966, Tr. Evidence) fail to coincide or connect up with the testimony of Richard E. Smith, and such evidence and the exhibits should have been excluded, to all of which the defendant objected and excepted, and still excepts. Said motion being in words, figures and phrases, towit:

“Comes the defendant, Thomas H. Robinson, Jr., and moves the Court for an order striking from the record and to exclude from the jury and their consideration the following Government Exhibits:

Exhibit 68—(2 sheets) (later, at the suggestion of the Court marked Exhibits 68-a and 68-b.)

Exhibit 69.

Exhibit 33—Original Ransom Note.

Exhibit . . .—Outside of Envelope Containing the Original Ransom Note.

All original charts and all copies of charts and photographs of charts, specimen photographs, and original negative of the outside Envelope Containing the purported original ransom note.

Negative and impressions or specimens of photographs of the inside of Envelope in which was contained the purported original ransom note;

Two photographs and all negatives of first page of purported original ransom note;

Original negative and all negative and specimen photographs of reverse side of first page of the purported original ransom notes;

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Two charts and all charts of reverse side of first page of the purported original ransom note;

Two charts and all charts of the second page of the purported original ransom note;

Reverse side of second page of the purported original ransom note;

Chart No. 1—Enlargement of right thumb impression of one of the fingerprint cards;

Chart No. 1-a—Latent impression appearing on reverse side of first page of the original ransom letter;

Original and all copies of photographs and negatives of the right thumb, Government Exhibit No. 70;

Exhibit 70-a) Negatives of the outside of the envelope;

Exhibit 70-b)

Exhibit 71-a, the negatives of the outside of the envelope;

71-b, inside of envelope;

71-c, the first page of the original ransom note;

71-d, second page of the original ransom note;

71-e, reverse of first page of ransom note;

71-f, reverse of second page of original ransom note;

32, letter addressed to Berry V. Stoll;

30, Envelope addressed to Miss Elizabeth McHenry;

48, Envelope addressed to 'The Custodian, etc.' and a single sheet addressed to the 'Custodian,' signed in typewriter 'Mr. Kennedy,' etc.

47, Envelope 'Important,' etc.—Pamphlet 'How to Use Corona Portable, etc.'

71-g;

71-h;

72-a, Letter from Mrs. Alice Stoll to Mr. Berry V. Stoll, in care of Mr. W. S. Speed;

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- 72-b, with reference to the first page of the same letter,
a chart, and the negative;
- 72-c, negative of the above;
- 72-d) with reference to the envelope of the same letter,
72-e) an enlargement of the envelope and the negative;
- 72-f and) With reference to inside of the envelope of
72-g) { the same letter, an enlargement;
- 72-h) With reference to the first page of the same let-
72-i) { ter, an enlargement and the negative;
- 72-j) With reference to the second page of the same
72-k) { letter, an enlargement;
- 72-l) With reference to the second page of the letter,
72-m) { an enlargement and the negative;
- 73-a) With reference to exhibits pertaining to the let-
73-b) { ter from Mrs. Alice Stoll to Miss Elizabeth Mc-
{ Henry, charts;
- 73-c) With reference to the envelope in which that
73-d) { same letter was contained, two enlargements and
73-e) { another enlargement and the negative;
73-f) {
- 73-g) With reference to the first page of the same let-
73-h) { ter from Mrs. Stoll to Miss McHenry, enlarge-
{ ment and the negative;
- 73-i) With reference to the reverse of the first page of
73-j) { the letter from Mrs. Alice Stoll to Miss Elizabeth
{ McHenry, the enlargement and the negative;
- 73-k) With reference to the second page of the letter
73-l) { from Mrs. Stoll to Miss Elizabeth McHenry, en-
{ largement and the negative;
- 73-m) With reference to the second page of the letter
73-n) { from Mrs. Stoll to Miss Elizabeth McHenry, en-
{ largement and the negative;
- 74-a) With reference to the testimony concerning the
74-b) { letter addressed to the Custodian, the envelope,
{ an enlargement, and the negative;

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- 74-e { With reference to the inside of the envelope ad-
 74-d { dressed to the Custodian, enlargement and a neg-
 { ative;
 74-e { With reference to the front page of the letter
 74-f { addressed to the Custodian, enlargement as Gov-
 { ernment Exhibit 74-e and the negative, 74-f;
 74-g { With reference to the letter addressed to the
 74-h { Custodian, an enlargement and the negative;
 75-a { Two enlargements and a negative, with reference
 75-b { to the envelope 'Important—read instructions
 75-c { for operating in this envelope, L. C. Smith and
 { Corona Typewriter Company, Inc.;'
 75-d {
 75-e { With reference to the reverse side of the same
 75-f { envelope, two enlargements and the negative,
 75-g { and the charts of the same.
 75-h {

"And to strike from and exclude from the jury any and all other exhibits to which said Knowles referred; and to strike and exclude from the jury all of said testimony of said witness Knowles; and to strike from the evidence and to exclude from the jury exhibits 68-a, 68-b, and 69, and the testimony of witness Richard E. Smith;

"Because the testimony of witness Knowles and the filing of the aforesaid exhibits and all such exhibits as witness Richard E. Smith and John P. Knowles referred to, was made contingent upon and subject to witness Knowles connecting up and identifying the known specimen of fingerprints with those appearing on certain exhibits which had tentatively and conditionally been filed by the United States as Government Exhibits; and because witness John P. Knowles failed to so connect them up or properly identify them, because he testified the fingerprints on those exhibits and documents could have been made by no other person than Thomas H. Robinson, or that

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they were made by Thomas H. Robinson (a person other than this defendant, Thomas Henry Robinson Jr.); and because this erroneous identity is important as a ground of objection, inasmuch as Thomas Henry Robinson, Jr., and Thomas Henry Robinson, Sr., are distinct and separate persons named in the indictment in this case; and because Thomas Henry Robinson, now deceased, was tried on this said indictment and acquitted."

ASSIGNMENT OF ERROR NO. 26.

Because the Court erred in refusing to permit the defendant to contradict and impeach witness Ann Hobbs Woollet by showing that she had executed a contradictory affidavit in September, 1935, and by showing by witnesses William K. Powell, Joseph M. Hayse and Nellie Stoess Hayse that said Ann Hobbs Woollet had previously made contradictory statements and that she had signed and executed an affidavit in September, 1935, which contradicted her and her testimony.

The testimony offered by witness Powell is found on pp. 1348 to 1366 of the Transcript of Evidence; that of witness Joseph M. Hayse is found on pp. 1304 to 1312 and 1538 to 1550 of the Transcript of Evidence; and that of Nellie Stoess Hayse is found on pp. 1550 to 1560 of the Transcript of Evidence; and the testimony of Ann Hobbs Woollet, which, is in question, is found on pp. 631 to 666 and 1606 to 1614 of the Transcript of Evidence; to the rejection of which testimony the defendant objected and excepted, and made avowal. The avowal being as follows:

"The witness, Joseph M. Hayse, if permitted to answer, would say, and it is true, that Ann Hobbs Woollet came to his law office in Louisville, Jefferson County, Kentucky, on or about September 9th, 1935, and while there made oral detailed statements of, about and concerning the facts of the Robinson-Stoll kidnapping case, facts before the taking of Alice Stoll from her home, and facts that happened in the Speed

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home, and facts that happened after Mrs. Alice Stoll's return on October 16th, 1934, in the home of Alice Speed Stoll on Line Kiln Road; that the witness, Nellie Stoess Hayse, if permitted to answer, and it would be true, would say that Ann Hobbs Woollet came to her home, being also the home of the witness, Joseph M. Hayse, at that time located on Confederate Place, in Louisville, Kentucky, and that Ann Hobbs Woollet made certain oral statements to her of, about and concerning the Stoll kidnaping case before and after the taking of Mrs. Alice Speed Stoll and after her return in October, 1934; that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say that Ann Hobbs Woollet's statement to Nellie Stoess Hayse were taken by Nellie Stoess Hayse in shorthand and later transcribed by Nellie Stoess Hayse on the typewriter into a written statement, and by Mrs. Ann Hobbs Woollet signed, subscribed and sworn to by Ann Hobbs Woollet on September 9th, 1935; that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say further, if permitted to answer, and those statements would be true, that the statement given to Joseph M. Hayse in his office by Ann Hobbs Woollet and the statement given to Nellie Stoess Hayse and Joseph Hayse in the Hayse home on Confederate Place is in substance, in words, figures, and phrases, to-wit:—

‘Before this time, she calls me up there, and wants me to bring her some pumpkin seed and I took them up there, and Robinson comes up and smiles at her, I thought it was just politeness then. She didn't look at him mean or anything, but just looked at him, I suppose you would call it a faint smile, but didn't crack her face. She didn't seem frightened or frantic, and was very calm. She must have known him before, as she didn't appear frightened, and did so much talking and kept her nerve, and she asked him what he was going to do there, I don't remember the exact words. I don't believe she made any reply to that right at that time. I think she just sort of sat and looked at him, sort of like she was thinking. She didn't

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seem to be particularly excited, or disturbed about it. I don't know who said it, but I know she wanted to offer him a check, and he wouldn't have that, of course. While she was sitting there in a rocking chair. He is nervous, he is afraid Berry Stoll is coming in there before he gets away, she seems to be in a hurry, I guess you call it, and he wants to hurry up and get away, get her all wrapped up before Berry comes home, and then she said "hurry" or "let's go," or something to the effect, showing that she was willing to go.

'Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out, and everybody away, and John Tarrant took us to W. B. Speed's over on Lexington Road. Mrs. Speed entered the door and took us up to the servant's quarters and put us in a very cool room, a cold room. Just had a little bed and a dresser in there, and I thought I was in jail for sure, it was so bleak looking. It was in the early evening, about 5 or 6 o'clock. We didn't want to stay there, I just couldn't stand it, and I felt that I wanted to see my mother, so bad, so I cried and took on pretty bad, and we wanted to leave, and Mrs. Speed wouldn't let us leave, she said, "There have been orders for you to stay here," and she had our supper sent up to us, then along about 8 o'clock, Mrs. Speed comes in and tell us "Alice has been returned," and she didn't act very thrilled, just calm. They had told us in the afternoon that she was going to be returned, that is why we had to leave the house.

'After that we went to bed, and we spent the night there, and the next morning early I would say around 7 o'clock, she orders a taxi for us, and we get in this taxi, and go back to Berry Stoll's. Mrs. Speed asked me—I was downstairs in my bedroom—and she asked me to go up there and clean up Mrs. Stoll's room, as there were no women in the house. That was on Wednesday. So I went up to clean her bedroom, and see her, listen I went to see her, though, before I went up to clean, just as soon as I got back to the house,

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she put her arms around me and kissed me, and this just shocked me to death, because she is sort of cold natured, and while cleaning her room, dusting, I raised a pillow up on a lounging chair, and I found a pile of money there, and it frightened me so I just dropped the pillow, and I don't know whether anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money. From then on, I didn't do anything, I was just up and down in bed most of the time, and then it was in this time that the doctor came to see me. After that I was just in bed most of the time. There never was anything said to me about the money. It wasn't fastened together, it was just sort of a nice bulk. It might have had a rubber band around it, I don't know. It was in currency. After I cleaned up the room, I went back to bed.

'We stayed at the Stolls then until Sunday morning. Then Stoll came down and told us he didn't need us any more, it was not told in my presence, but I heard it outside my room. I heard him tell Fowler simply that he wouldn't need us any more; that he was going to close up the place, and he didn't want to see it any more. He said he might open it up in the spring, and Fowler asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up at all. I heard Fowler tell him that I was sick, I couldn't be moved, and he said, "The sooner the better." He didn't give any reason why he had to leave except he didn't want to see the place any more, Mrs. Stoll couldn't stand to see me. He said that we would all be better off.

'We just got ready and left, and before we left, Mrs. Woollet, Fowler's mother, Agnes Woollet, asked him for a written statement that "These children were free of all suspicions," and he said he would be glad to but he had to get permission from the authority or something before he could do it, and he never did do it. I told him that I would like to see Mrs. Stoll

Assignment of Errors

before I left, and he came down and told me that I couldn't see her that she was resting and was not feeling well.' "

* ASSIGNMENT OF ERROR NO. 27.

Error of the Court in ruling that any statements made by witness Ann Hobbs Woollet to Joseph M. Hayse and Nellie Stoess Hayse were statements made to an attorney while the relationship of attorney and client existed and were thus inadmissible (pp. 652 to 666 Tr. Evidence; and 1606 to 1614, Tr. Evidence) because witness Ann Woollet (p. 664 Tr. Evidence) testified that she had never consulted any attorney about the matter in question, and (on p. 1609 Tr. Evidence) she testified that she had not consulted Hayse as an attorney about anything, and that there had never existed between her and Joe Hayse the relationship of attorney and client; to all of which defendant objected and excepted, and made avowal.

ASSIGNMENT OF ERROR NO. 28.

Error of the Court in overruling objection to the testimony of witness Charles A. Appel, handwriting and questioned-documents expert, said objection being based on the ground that defendant had not been furnished any notice by the Government that it intended to make any comparison between genuine and questioned specimens, and based further on the fact that, as there is no federal statute in effect requiring the furnishing of such advance notice of the intention to compare specimens, the Kentucky Statutes, which require the giving of such advance notice, prevail, to which ruling of the Court the defendant objected and excepted, and still excepts. Said testimony of witness Appel being found on pp. 984 to 1019 Tr. Evidence; and said Court further erred in permitting the filing of Government Exhibits, including in witness Appel's testimony, Nos. 26, 27, 28, 33, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 62, 63, 64, 65, and 66, (p. 1019 Tr. Evidence), to which defendant objected and excepted.

*Assignment of Errors***ASSIGNMENT OF ERROR No. 29.**

With the testimony of witnesses John P. Knowles, Richard E. Smith, Charles A. Appel, and the exhibits to which their testimony included, properly excluded, as it should have been, there was no case to submit to the jury, and it was error for the Court to admit their testimony and the exhibits to which it referred, and it was error for the Court to overrule the defendant's motion for a directed verdict made at the conclusion of the Government's case and at the conclusion of all the evidence; to the overruling of which defendant excepted, and to the inclusion of such testimony and such exhibits the defendant objected and excepted.

ASSIGNMENT OF ERROR No. 29.

Error of the Court in allowing the Government to go further in contradicting or impeaching witness Alvin Kirtley than merely showing that he had previously made contradictory statements or that he had been convicted of a felony; and because the court erred in not confining the cross-examination of this witness to the main issue brought out on direct examination rather than permitting the Government to go far afield in its cross-examination; because such facts brought out upon the vicious and protracted cross-examination of said witness were irrelevant and incompetent, and such cross-examination swayed and prejudiced the jury against this defendant. (pp. 1248 to 1277; 1280 to 1282; 1326 to 1330, Tr. Evidence).

ASSIGNMENT OF ERROR No. 30.

Error of the Court in charging the jury that witness Alvin Kirtley had used first one name and then another in applying for a driver's license; and that his credibility had been attacked by the Government on the ground that Kirtley did not report the matter to the police or any enforcement officers, although the case was one of wide notoriety; because a witness' credibility may not be attacked

Assignment of Errors

in such manner, and it was error to charge the jury in the manner indicated. (pp. 2080 and 2081, Tr. Evidence).

ASSIGNMENT OF ERROR No. 31.

The Government failed to establish by competent, relevant, or any, evidence that this defendant held Mrs. Stoll for ransom or reward; or that he transported her in interstate commerce while being so held; and it was error to overrule defendant's motion for a directed verdict made at the conclusion of the Government's case, to which defendant excepted.

ASSIGNMENT OF ERROR No. 32.

Error of Court in overruling defendant's objection to the testimony of F. B. I. Agent McKee and to the introduction of Government Exhibit No. 48, being letter and envelope addressed to "Custodian", because it was not established who wrote the letter, and the letter and envelope were admitted conditionally upon it being shown who wrote them (pp. 824 and 825 Tr. Evidence); because further, with the testimony of witnesses Knowles, Richard E. Smith and Charles A. Appel excluded, there was no evidence connecting this defendant as being the author of those documents.

ASSIGNMENT OF ERROR No. 33.

Error of the Court in overruling objection to the testimony of witness Laughlin, an F. B. I. agent, (p. 1052, Tr. Evidence), because said witness was permitted to testify conditionally and upon the promise that his testimony would be connected up by F. B. I. agent Bugas' testimony, and the basis of the objection was that witness Laughlin did not testify that certain entries made concerning the serial numbers of currency (ransom money) had been made in the usual and regular course of business. (see pp. 1021, 1022, 1023); to which the defendant excepted.

*Assignment of Errors***ASSIGNMENT OF ERROR No. 34.**

Error of the Court in admitting incompetent evidence, brought out on cross-examination of this defendant, of the commission of prior offenses by this defendant, or the involvement of this defendant in some prior charges brought against this defendant by some women of Nashville, Tennessee, which said cross-examination had for its purpose the showing that this defendant had smeared, or threatened to smear other women who dared to accuse him of the commission of an offense, which such testimony was highly prejudicial and inadmissible, to which defendant excepted. (pp. 1204 to 1207, Tr. Evidence).

ASSIGNMENT OF ERROR No. 35.

Error of the Court in admitting in evidence letter dated July 1, 1936 (pp. 1237 and 1238) to W. A. Smith, Special Agent, F. B. I., because said letter was not voluntarily written; was written in consideration of a promise and inducement; was written while defendant was presumably insane; was written before any legal arraignment of this defendant, and was incompetent, involuntary, and inadmissible.

ASSIGNMENT OF ERROR No. 36.

Error of the Court in permitting lay witnesses Dick Atkinson (pp. 1401, 1402, 1403, 1404) and John Ward (p. 1766) and Dr. Long, dentist, (pp. 1772 and 1773) to express an opinion of whether or not this defendant knew right from wrong, to which ruling of the Court this defendant objected, and excepted; because such witnesses were incompetent to express such an opinion, and such testimony was inadmissible and prejudicial.

ASSIGNMENT OF ERROR No. 37.

Error of the District Attorney, Mr. Brown, in making, in his argument to the jury, highly prejudicial statements

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about this defendant smearing other women and telling the jury as follows:

(page 2063, Tr. Evidence).

"We had this story. It was very clever. We had this story that was the pattern of every prior smear campaign he ever started. I didn't know until the time he took the witness-stand that that story would come out. I suspected it. On prior history, it was bound to come out. He had done it every time that he was charged with crime where he had no other recourse. The only time that he didn't use it was in the robberies of Mrs. Lamb and Mrs. Waggoner, and at that time he escaped into the defense of insanity. Now that was the only time he hadn't used this smear campaign."

Because such statements to the jury were calculated to inflame and prejudice them against this defendant, and did so; because such statements were not true, and because even though true related to prior offenses and involvements and were inadmissible in evidence and were unwarranted in argument.

ASSIGNMENT OF ERROR No. 38.

Because the Court erred in empaneling, swearing, and permitting C. E. Miller to be sworn, chosen, and to serve as an alternate juror (p. 305, pp. 310 to 313 and p. 342 and p. 1342, Tr. Evidence); and further erred in permitting said alternate juror C. E. Miller to take the place and serve instead of juror Mrs. Davidson and to participate in the consideration of this case and in the rendition of a verdict therein; because Section 417a of Title 28, United States Code Annotated, providing for the selection and use of alternate jurors, is unconstitutional null and void, and an invasion of this defendant's Constitutional right to a trial by a jury of twelve, no more and no less, as provided by the Sixth Amendment, and by Article II, Section 2, Clause 3 of the United States Constitution; and because when

Assignment of Errors

juror Mrs. Davidson became ill and was unable to continue on as a juror and was excused by the Court from further service (p. 1342, Tr. Evidence) there remained no legally or constitutionally composed jury, and the substitution of alternate juror C. E. Miller for juror Mrs. Davidson violated this defendant's Constitutional rights, to the great prejudice of this defendant.

ASSIGNMENT OF ERROR NO. 39.

The Court erred in overruling defendant's challenge for cause of the following jurors:

Winthrop Allen. (pp. 45 and 47, 88 to 91 Tr. Evidence)
 Jane Ballard..... (pp. 88 to 91 Tr. Evidence)
 Elbert Geary Sutcliffe. (pp. 156 and 157 Tr. Evidence)
 Wallace VanCleave... (pp. 156 and 157 Tr. Evidence)
 Mrs. Martha Eastes.. (pp. 156 and 157 Tr. Evidence)

because said jurors were disqualified, for cause, from serving upon this defendant's jury by reason of social contacts, business, professional, personal and religious relationship with the chief prosecuting witness, Mrs. Alice Stoll, and with the members of the Stoll, Speed and Sackett families, and because of formulated opinions and of bias and prejudice against this defendant; and because the action of the Court in overruling said challenges for cause, caused this defendant to, and he did, exercise peremptory challenges for each of said jurors in striking them from said jury, and caused this defendant to utilize all of his 20 peremptory challenges and to accept other otherwise unacceptable jurors, all to the great prejudice of this defendant, to which ruling of the Court, the defendant excepted.

ASSIGNMENT OF ERROR No. 40.

Error of the Court in refusing to give to the jury the following instructions offered by the defendant, Thomas Henry Robinson, Jr.:

Assignment of Errors

“ ‘REASONABLE DOUBT’ is that frame of mind which forbids you to say, all the evidence considered and weighed, ‘I have an abiding conviction of the defendant’s guilt’. If you are in the frame of mind where, if it was a matter of importance to you in your own affairs, away from here, you would pause and hesitate before acting, then you have a reasonable doubt. A reasonable doubt exists where, after the entire comparison and consideration of all the evidence, the minds of the jurors are left in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

“3. Witness Ann Hobbs Woollet was asked whether or not she had made certain statements previously to witnesses Joseph Hayse and Nellie Stoess Hayse, and witness Woollet stated that she had not consulted attorney Joseph Hayse and had not made statements asked of her in the foundation questions; witnesses Joseph Hayse and Nellie Stoess Hayse stated that witness Woollet had consulted witness attorney Hayse and that she had made certain statements to attorney Hayse and Nellie Stoess Hayse, which were reduced to writing on September 9, 1935, and then, when witness Woollet was confronted with such testimony and facts and when shown an affidavit said by said witnesses Hayse to contain witness Woollet’s statements, witness Ann Hobbs Woollet then said she had signed the statement in question but did not remember giving the statements contained therein. If you believe that Ann Hobbs Woollet intentionally made a false statement, or falsely or intentionally stated in answer to the foundation questions that ‘I don’t remember’, or ‘I do not recall’, or ‘I don’t know’, or believe that witness Ann Woollet intentionally made a false statement with respect to any material fact, you may disregard all of her testimony.

“4. Testimony of Ann Hobbs Woollet should be received by the jury with caution and be carefully scrutinized.

“5. No crime under the indictment in question

Assignment of Errors

could take place until Alice Speed Stoll was transported, taken, or carried away in interstate commerce after first having been held for ransom or reward, by defendant Thomas Henry Robinson, Jr.

"6. There must be evidence of substantial value that Alice Speed Stoll was held for ransom or reward and while so held was transported, taken or carried away in interstate commerce; and that she was not a child of Thomas Henry Robinson, Jr.

"If any of these elements are missing, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"7. The death penalty may not be recommended in this case, and may not be imposed, if, prior to the imposition of sentence upon defendant, Thomas Henry Robinson, Jr., Alice Speed Stoll was released unharmed, if you should believe that she was transported in interstate commerce after first having been held for ransom or reward by defendant, Thomas Henry Robinson, Jr.

"8. There being a total absence of evidence of the physical condition of Alice Speed Stoll at the time of the trial of defendant, Thomas Henry Robinson, Jr., and likewise a total and complete lack of any evidence of her physical condition and whether or not she is in a harmed or unharmed physical condition at the time of imposition of sentence (if there is to be an imposition of sentence) upon Thomas Henry Robinson, Jr., now the jury may not recommend any imposition of the death penalty in this case.

"9. If the facts as proven are as consistent with innocence, as they are of guilt, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"10. Defendant, Thomas Henry Robinson, Jr., cannot be found guilty, if the proven facts are consistent with innocence.

"11. The questions you are to decide are whether the defendant on trial is guilty, first, of unlawfully holding for ransom or reward Alice Speed Stoll, and secondly, of unlawfully transporting her in

Assignment of Errors

interstate commerce while so held. If you are not satisfied that Alice Speed Stoll was so held for ransom or reward, or that she was transported in interstate commerce while being so held, you must acquit this defendant.

"12. If any of the elements set out in the foregoing charges 10 and 11 are missing, you must acquit the defendant.

"14. The indictment is no evidence, and you should not consider it as such. It is merely an accusation which the Government, the plaintiff, is required to prove in every detail, and the burden of proving every detail of the indictment is upon the Government.

"15. The defendant is not required to prove himself innocent or to produce evidence at all on the subject of his innocence. As a matter of strict logic, the jury should conclude from the fact that the defendant is presumed to be innocent and that the burden of proof is upon the Government that, he, himself, is not required to prove innocence or to produce evidence.

"16. You are instructed as a matter of law that the burden of proof is always upon the prosecution. It is not sufficient to establish a probability, though a strong one, arising from the doctrine of chance, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact beyond a reasonable doubt.

"17. The burden of proving each essential element of the offense is placed upon the prosecution, and until each essential element is established to your satisfaction beyond any reasonable doubt, you cannot return a verdict of guilty as indicted. You are instructed as a matter of law that before you would be justified in returning a verdict of guilty, you must find that the defendant committed not one, not some, but all and each and all of the acts charged against him as having by him been committed as charged in the indictment.

"18. If you believe beyond a reasonable doubt that the defendant is guilty of some of the acts charged in

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the indictment, but you have a reasonable doubt as to whether he is guilty beyond a reasonable doubt of each and all of the acts charged in the indictment, you can not find him guilty of any of the acts so charged.

"19. Every material fact, whether direct or circumstantial, essential to the establishment of the guilt of the accused, must be proven to the satisfaction of the jury beyond all reasonable doubt.

"20. Insanity as a defense: The jury are instructed that if they believe from the evidence that at the time of committing the acts, or any of them, charged in the indictment, the defendant, Thomas Henry Robinson, Jr., was suffering from such a perverted and deranged condition of his mental and moral faculties as rendered him incapable of distinguishing between right and wrong, or unconscious at such times or time of the nature of the acts, or any of them, charged in the indictment while committing the same, or any of them; or where, though conscious of them, and able to distinguish between right and wrong and to know the acts were wrong, yet his will—that is to say, the governing power of his mind, was, otherwise than voluntarily, so completely destroyed that his actions, or any of them, were not subject to it, but were beyond his control; or, if you believe that at such time or times mentioned in the indictment, that said defendant was not able to understand or appreciate the nature or consequences of his acts, or any of them; or, if knowing and appreciating the nature and consequences of his acts, yet did not have or possess such will power to resist the impulse to do the acts, or any of them, mentioned in the indictment, it is your duty to acquit this defendant, and in such case your verdict shall be 'NOT GUILTY'."

"21. The defendant, Thomas Henry Robinson, Jr., was twice legally adjudicated insane, and had never been restored to sanity at the time of, or prior to, the indictment. The presumption of his insanity exists and the Government is under the burden to

Assignment of Errors

prove that he was sane at the time of committing the acts charged in the indictment beyond a reasonable doubt. The burden is not upon this defendant to prove insanity and no presumption in this case exists that this defendant was sane at the time of the commission of the acts charged against this defendant in said indictment.

"22. The presumption does not exist, that although this defendant was twice adjudicated insane, or that he was adjudicated insane, that time has eradicated the presumption of insanity. That presumption is never eradicated, but must be proven by the Government beyond a reasonable doubt."

And by reason of said errors and other manifest errors and other errors appearing in the record herein, the defendant, Thomas Henry Robinson, Jr., prays that the judgment of conviction be set aside and that he be discharged of custody.

Dated February 8, 1944.

Robert E. Hogan,
Counsel for defendant,
Thomas Henry Robinson, Jr.

ORDER FILING ASSIGNMENT OF ERRORS.

On February 18, 1944, came the defendant Thomas Henry Robinson, Jr., and tendered in open court his Assignment of Errors herein which is hereby ordered to be filed and made a part of the record herein this 18 day of February, 1944.

Shackelford Miller, Jr.,
Judge, United States District
Court for the Western Dis-
trict of Kentucky.

Eli H. Brown, III
Counsel for the United States of America.

Robert E. Hogan,
Counsel for Defendant,
Thomas Henry Robinson, Jr.

BILL OF EXCEPTIONS.

Be it remembered, that on September 28, 1943 the defendant Thomas Henry Robinson, Jr. was presented in open court, the United States Attorney being present in person, and thereupon, pursuant to the written request of the defendant, Robert E. Hogan, an attorney admitted to practice before all State and Federal courts in the Commonwealth of Kentucky, was appointed by the Court to represent the said defendant.

Thereafter, on September 30, 1943, in open court, certain proceedings were had;

Thereafter, on Wednesday, October 6, 1943, in open court, certain proceedings were had;

Thereafter, on October 13, 1943, in open court, certain proceedings were had, and all pending motions having been considered and passed upon and orders duly entered, the defendant Thomas Henry Robinson, Jr. was formally ar-

Bill of Exceptions

raigned, entered a plea of not guilty and the cause was assigned to trial before the Court and a jury on Monday, November 29, 1943.

Thereafter, on the 29th day of November, 1943, the above-entitled cause came on for trial at Louisville, Kentucky, pursuant to assignment, before the Honorable Shackelford, Miller, Jr., United States District Judge for the Western District of Kentucky, and a jury. On behalf of the United States there appeared Eli H. Brown, III, United States Attorney for the Western District of Kentucky, and J. D. Inman, Assistant United States Attorney for the Western District of Kentucky. On behalf of the defendant, who appeared in person, came his counsel, Robert E. Hogan, an attorney of Louisville, Kentucky.

Thereafter, to and including each day except Sunday, December 5, 1943, to and including Saturday, December 11, 1943, the cause was tried before the Court and jury. On December 11, 1943, the jury returned a verdict of guilty, recommending the imposition of the death penalty, and thereupon by agreement the cause was passed to Monday, December 13, 1943, and it was ordered that the defendant Thomas Henry Robinson, Jr., be presented for sentence.

Throughout the period mentioned above, to-wit, September 28, 1943 to and including December 13, 1943 and on the specific dates mentioned all of said proceedings were stenographically reported by the official court reporter. All evidence heard, all motions made, all rulings thereon, all objections and exceptions to the reception of evidence or to the refusal to permit evidence to be introduced, all avowals and exhibits are incorporated and embodied in the court stenographer's "Transcript of court proceedings had before the trial of Thomas Henry Robinson, Jr.," "Transcript of court proceedings had during the trial of Thomas Henry Robinson, Jr." and "Transcript of court proceedings had on December 13, 1943 pertaining to the sentencing of Thomas Henry Robinson, Jr." and the same are made a part of the Bill of Exceptions by incorporating the same herein by reference and are copied herein in full. Said proceedings in their entirety are as follows:

1* UNITED STATES DISTRICT COURT
 Western District of Kentucky
 At Louisville

United States of America, - - - - Plaintiff,
 v.
 Thomas Henry Robinson Jr., - - - Defendant.

**TRANSCRIPT OF COURT PROCEEDINGS HAD
 BEFORE THE TRIAL OF THOMAS HENRY
 ROBINSON, JR.**

Louisville, Kentucky,
 September 28, 1943.

Before Honorable Shackelford Miller, Jr., United States
 District Judge for the Western District of Kentucky,
 at Louisville.

Appearances:

Eli H. Brown, III, United States Attorney, for the
 government.
 J. D. Inman, Assistant United States Attorney, for
 the government.
 Thomas Henry Robinson, Jr., the defendant.

2 PROCEEDINGS

The Court: Have you got a matter against Thomas
 Henry Robinson, Jr.?

Mr. Brown: Yes, Your Honor.

The Court: Is your name Thomas Henry Robinson, Jr.?

Mr. Robinson: Yes, sir.

*Inset numbers appearing at outer edge of text indicate page numbers of original Transcript of Court Proceedings.

Proceedings

The Court: Mr. Robinson, the Grand Jury of this court returned an indictment against you on the 20th of October, 1934. The court has ruled that you are entitled to plead to that indictment and to have a trial on the charges which the indictment contains.

I have been forwarded by your mother—is this Mrs. Robinson?

Mrs. Robinson: Yes.

The Court (Continuing): From Nashville certain papers, one dealing with an affidavit for you to sign. It is styled affidavit in forma pauperis, which asks leave, if you execute it, to proceed in forma pauperis in this case. Also, another application for your signature for the appointment of two counsel to represent you. And also another pleading, which has not been signed but which is styled plea in abatement. Do I understand from these that you do not have funds with which to secure an attorney of your own choosing and selection?

Mr. Robinson: That's right.

3 The Court: And that you want two attorneys to represent you in this case?

Mr. Robinson: Yes, sir.

The Court: The Court will appoint Mr. Robert Hogan and Mr. Paul Keith.

Mr. Robinson: Your Honor, if I may say, Mr. Hogan represented me previously in this case, and there was a little disagreement among counsel at that time, and I would like to ask that someone else be appointed.

The Court: How do you mean "disagreement"?

Mr. Robinson: Mr. Hogan was connected with the firm when my appeal for a new trial was overruled in this court, and I understood there was quite a bit of disagreement between counsel at that time.

The Court: Between him and other counsel?

Mr. Robinson: No, between him and his associates on my motion for a new trial, and I don't think Mr. Hogan would want to serve if he knew how I feel about that.

The Court: Well suppose I give you an opportunity to talk to Mr. Hogan. Suppose you and Mr. Hogan talk it over, and then after that, if you come to the conclusion

Proceedings

that it would be better to appoint someone else for you, I will be glad to do it. I think probably you had better talk to him and see what the situation is.

Mr. Robinson: All right, I will be glad to do that.

4 The Court: All right. I will be here and when you all reach a decision in that matter you may let me know and if that appointment is not to be made, we will make another.

Mr. Robinson: Is Mr. Hogan present?

The Court: I think Mr. Hogan is here. Mr. Hogan.

Mr. Hogan: Yes.

The Court: You may interview Mr. Robinson, Mr. Hogan, and the Court will take it up with you later.

Mr. Robinson: Thank you, Your Honor.

The Court: We will have a short recess.

After a short recess the following proceedings were had:

The Court: Did you have a talk, Robinson, with Mr. Hogan?

Mr. Robinson: Yes, sir. Mr. Hogan and I have reached an agreement and I think I would like to have him as counsel in this case.

The Court: You think you would like to have him?

Mr. Robinson: Yes. I want to explain that. Before, a disagreement had formerly arisen between Mr. Huggins who was associated with him at that time and Mr. Hogan. I did not know Mr. Hogan personally. Every-

5 thing is quite satisfactory and I would be glad to have him as my counsel.

The Court: And Mrs. Robinson has talked about it too? Is it satisfactory to you?

Mrs. Robinson: Yes.

The Court: All right. The appointment will stand. I understand you want the appointment to stand?

Mr. Robinson: Yes, Your Honor.

Mr. Hogan: If Your Honor please, the occasion may arise where we might need the assistance of some out of town counsel. I would like to reserve the privilege of asking the Court to permit me, if that occasion does arise, to have the assistance of counsel, say, from Nashville or the State of Tennessee.

Proceedings

The Court: I don't know that the Court can appoint out of town counsel. There is no provision for the payment of compensation of out of town counsel. I have no objection, of course, to you and your associate attorney making any arrangements for assistance if you and your client arrange it.

Mr. Hogan: I am not asking the Court to appoint one—I am just asking the privilege of having an associate in the case if the occasion arises or it is deemed advisable to have other counsel.

6 The Court: If the defendant wants that, he can avail himself of that privilege.

Mr. Brown: Your Honor, I think we should set an arraignment date, too, at this time so he can be arraigned.

The Court: Mr. Hogan, I will hand you these papers which Mrs. Robinson forwarded to me which have been prepared apparently by Montague S. Ross, an attorney of Nashville, Tennessee, as they came in an envelope with his return address on it.

Now, they have not been signed or anything, and you can go over them and you and Robinson can determine what you want to do with them, and here are the copies that came along. Whether you decide to file a plea in abatement or not, either in that form or some other form, is for you and your co-counsel to decide upon.

I would suggest, unless you have some reason to the contrary, that we set the arraignment for tomorrow at ten o'clock.

Mr. Hogan: I think that will be satisfactory. That is a little bit close up but I think we can have our pleas ready by that time.

The Court: Now if that is too close for you, we will set it for day after tomorrow at ten o'clock.

Mr. Hogan: Suppose we set it for day after tomorrow, Thursday.

The Court: All right, Thursday morning, at 10 o'clock.

Mr. Brown: The bond was originally fixed at \$50,000, and I think there should be the same bond.

The Court: Was there bail in the case?

Proceedings

Mr. Brown: It is within the discretion of the Court.

The Court: Well if there is any application for bail, the Court will fix the amount. I don't know whether the defendant is going to apply for it or not.

Mr. Hogan: We will reserve the right to make that application.

The Court: Yes. I will ask the Clerk to notify Mr. Paul Keith of his appointment as associated with you, Mr. Hogan, as counsel for the defendant, then the matter will be adjourned, until Thursday morning at ten o'clock.

The court convened pursuant to adjournment, on Thursday morning at 10 o'clock, September 30, 1943, and the following proceedings were had:

The Court: Mr. Hogan, are you ready in the Robinson case?

Mr. Hogan: Yes. If Your Honor please, in the matter of United States of America v. Thomas Henry
8 Robinson, Jr., I desire to file with the Court—

The Court (Interrupting): I think before you make any pleadings, probably we should read the indictment.

Mr. Hogan: All right, Your Honor.

The Court: Robinson, in reading the opinion of Judge Roche of the California Court, which heard your writ of habeas corpus, I see from that that sometime prior to 1934, there was some proceeding with regard to your sanity, in Tennessee, and I believe there was an adjudication, was there not?

Mr. Robinson: Yes, sir.

The Court: Is there any contention made now that you are in any way mentally unsound and mentally incompetent at the present time?

Mr. Robinson: No, sir. I feel, and I think my family and friends feel, that I am perfectly competent and sane.

The Court: Is there any contention by your attorneys that you are mentally incompetent or mentally unsound at the present time?

Mr. Hogan: There is no contention at this time that he is insane or otherwise mentally incompetent.

I might say to the Court that there probably will be,

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there will be, a plea that at the time and before the time of the alleged commission of the acts charged in the indictment that the defendant Thomas Henry Robinson, Jr. was insane and not mentally capable of knowing what he was doing or understanding the nature or purport or the result of any act that he might have been alleged to have done in connection with these matters set up in the indictment.

The Court: Well I understand that, in connection with the charge, but there seems to be some law, as outlined by Judge Roche, that no plea should be taken if the man or the defendant alleges or claims in any way any mental incompetency, and I just wanted to be sure there was no claim at the present time.

Mr. Hogan: As the defendant himself has stated and as I want to state now as one of his counsel that there is no such plea that he is now insane or mentally incompetent.

The Court: All right. Now, Robinson, in this action which is number 18917, in the United States District Court for the Western District of Kentucky, Louisville Division—

Mr. Brown (Interrupting): I think the first count has been nolle.

The Court: I will read the indictment insofar as it pertains to the present charge:

“In the District Court of the United States for the Sixth Judicial Circuit and Western District of Kentucky, held at Louisville, October Term, in the year of our Lord 1934, First Count—”

That count was against Thomas Henry Robinson, Jr., Mrs. Frances Robinson, and Thomas Henry Robinson, Sr. and was nolle by the District Attorney, as I understand.

Mr. Brown: I believe the jury found Mrs. Frances Robinson and Thomas Henry Robinson, Sr. not guilty, and Judge Hamilton dismissed it as to Thomas Henry Robinson, Jr.

The Court: The first count is no longer in the case. (Reading):

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"Second Count:

"And the Grand Jurors aforesaid upon their oaths aforesaid do further present:

11 "That heretofore, to-wit, on or about the 10th day of October, in the year of Our Lord, 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district, unlawfully did then and there knowingly transport and cause to be transported and aid and abet each other in transporting in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, and said person was not a minor and had not been seized and carried away by her parents, and did not liberate said person unharmed; that is to say, at said time and place the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr. unlawfully did then and there transport and cause to be transported and aid and abet each other in transporting in interstate commerce, to-wit, in commerce from Louisville, in the State of Kentucky to Indianapolis, in the State of Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnaped, abducted and carried away from her home by the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., and held the said Mrs. Alice Stoll for ransom or reward, and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson, and Thomas Henry Robinson, Sr. did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed.

"Against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided."

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12 This indictment was filed in open court the 20th day of October 1934.

Now, Mr. Hogan, have you some pleas that you wish to make?

Mr. Hogan: Yes. On behalf of the defendant, I present to the Court application for appointment of counsel and for leave to proceed in forma pauperis and an affidavit in support of that application.

And also, on behalf of this defendant I desire to file a plea in abatement. There are several matters set up in the plea in abatement which the Court may or may not desire to inquire about at this time.

The Court: Have you furnished the District Attorney with a copy of these pleadings?

Mr. Hogan: I have, Your Honor.

Mr. Brown: At this point I would like to state that I have received copy of the plea in abatement. I do not believe that I have received a copy of the other papers.

Mr. Hogan: I thought I had those other pleas with me but I don't, but I have them in my office and I will furnish them to Mr. Brown.

Mr. Brown: That is quite sufficient.

The Court: Do you want to be heard on this plea, Mr. Hogan?

13 Mr. Hogan: If Your Honor please, we do want to be heard, but we would like and rather insist upon this request that the hearing on that plea in abatement be passed to some other time than today.

I might say that I have been busily engaged in reviewing the record in this case, which this Court itself knows is quite lengthy. There have been a lot of proceedings held in this court and in the courts of California, and in the Circuit Court of Appeals and I think in the Supreme Court of the United States; and counsel has been pressed for time. Also, considerable time has been taken up in interviewing the defendant and for that reason we rather insist upon a hearing on this plea at some other time.

The Court: What time do you want?

Mr. Hogan: Would it inconvenience the Court to say some time about the middle of next week?

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The Court: I think that is satisfactory with me.

Mr. Brown: That is quite all right with me.

The Court: Next Wednesday?

Mr. Hogan: That is all right, if Your Honor please.

The Court: Wednesday, October 6th, at 10 o'clock.

I suggest that it would probably expedite the matter if
 14 counsel for both sides would furnish the other side with the authorities that they expect to rely upon.

Mr. Hogan: That was one of the reasons for delay, to get a memorandum brief that we might exchange.

The Court: If both of the attorneys will furnish me with a list of the authorities which they expect to rely upon and give opposing counsel copy of it, we will all be familiar with the cases that are being discussed.

Mr. Brown: Yes. If you will let me have them by Saturday or not later than Monday—I imagine you have most of them.

The Court: Now do you wish to delay the plea until a later time, or do you wish to plead now?

Mr. Hogan: We wish to delay a plea on the indictment until a later time.

The Court: Until after the plea in abatement has been ruled upon.

Mr. Hogan: I think that is the proper procedure because if the plea in abatement should be sustained there would be no necessity, as I understand it, for making a plea of guilty or not guilty to the indictment.

The Court: All right.

Mr. Keith: There has also been filed a motion for the appointment of counsel which I understand the filing of it today is probably the official filing of it—that the appointment that was made the other day was before those
 15 were officially filed.

The Court: That is right. The defendant told me in court that he wished me to appoint counsel at that time.

Mr. Keith: If Your Honor please, I would like to withdraw from the case if I could. I have talked to Mr. Hogan and I understand he has talked with Mr. Robinson about it, and it is all right with them.

The Court: The statute, I believe, requires that the

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Court appoint not more than two counsel if the defendant desires two counsel. This application asks for two counsel and if the defendant still wants two counsel, I don't believe I would be permitted to let you withdraw. If he only wants one counsel now—

Mr. Hogan (Interrupting): I suggest that that matter be left entirely to the defendant.

Mr. Robinson: I would be willing to proceed with one counsel until such a time—unless we should find that other counsel would be needed in the case.

The Court: Then, as I understand it, your request then for two counsel would be modified to the extent that you will only want the Court to appoint one counsel for you, and that is Mr. Hogan who has already been appointed.

Mr. Robinson: Yes.

The Court: And Mr. Keith can withdraw from the
16 case with the defendant's approval.

Mr. Robinson: Yes, sir.

The Court: All right, Mr. Keith, your appointment can be withdrawn and Mr. Hogan will be the counsel appointed for the defendant in this case. If there is any change, the Court will have to be advised of it by defendant or his counsel.

Mr. Hogan: We will notify the Court of any change.

The Court: Then the matter will be continued over until next Wednesday at 10 o'clock, at which time we will hear the arguments on the plea in abatement.

The defendant is in the custody of the Marshal.

Met pursuant to adjournment at 10 o'clock Wednesday October 6, 1943, and the following proceedings were had:

The Court: Mr. Hogan, you have filed a plea in abatement on behalf of the defendant Robinson in this matter, No. 18917, which is set for hearing this morning. Are you ready?

Mr. Hogan: Yes, Your Honor. Before I take up the argument in that matter, however, I would like to file on behalf of the defendant a motion by the defendant in per-

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son and by counsel for an order permitting and allowing the defendant to inquire into the proceedings and evidence introduced before the Grand Jury which returned the indictment in this case on October 20, 1934, the purpose of that being to establish whether or not any witness whatsoever testified whether or not Mrs. Alice Stoll was liberated unharmed at the time set out in the indictment, and to permit this defendant to inspect the minutes of the Grand Jury, and to procure testimony and affidavits of Grand Jurors and witnesses who testified before that body as to whether or not any person whatsoever testified as to whether or not she had been liberated unharmed at the time set out in the indictment and as charged in the indictment. And, further, to permit this defendant to use such evidence, information and affidavits thus obtained in support of his plea in abatement.

In addition to that I desire to file on behalf of the defendant a motion for a rule to require the United States of America, the plaintiff, to show cause if any it has or can why it should not be compelled to reply to this plea in abatement filed by the defendant in this action.

Now, in support also of the plea in abatement, I desire to file my own affidavit as to admissions made to me on Thursday, September 30, 1943, by Mr. Claude Hudgins who was then Assistant United States District Attorney and who volunteered to me the information that he conducted all of the hearings before that body and that nobody testified as to Mrs. Stoll's condition at the time she was released. In other words, that there was no testimony whatsoever introduced before the Grand Jury as to whether or not she was harmed or unharmed at the time she was allegedly liberated.

The Court: You have seen these pleadings filed by the United States, have you—on October 5th?

Mr. Hogan: Mr. Brown furnished me with a copy of those affidavits, I believe.

The Court: Well, one is a motion to strike the plea in abatement supported by four affidavits, A, B, C and D.

Mr. Hogan: Yes, I have been furnished with those, Your Honor.

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Mr. Brown: Now if I could be furnished, Your Honor, with copies of all motions filed, and I understood Mr. Hogan was going to furnish me with copies of the memorandum not later than Monday on this motion for plea in abatement. Of course I understand that Mr. Hogan is busy but I took time to furnish him not only copies of everything I intended to file prior to the hearing, with copies of the authorities I intended to rely on. I have just been handed this morning some memorandum of decisions to be relied on consisting of six cases. Three of those cases I have read and three of them I haven't read.

I feel that we will proceed in a much more
 19 orderly fashion if I could have even twelve hours prior to the hearing to read some of the authorities that Mr. Hogan is going to present. I don't think that I am unreasonable in that request.

Mr. Hogan: The defendant is perfectly willing—

Mr. Brown (Interrupting): You might be willing, but you said you would do it before and you didn't do it until this morning.

Mr. Hogan: I might say that prosecuting is routine business for the prosecuting attorney but it is a special business of mine, and—

Mr. Brown (Interrupting): This case isn't routine business by any manner or means.

The Court: I think we understood last week when the motion for plea in abatement was made that counsel for both sides would furnish us with a memorandum of authorities, and also furnish the Court with that. Probably Mr. Hogan has been a little rushed in getting up his memorandum of authorities; however, I suggest that in the future we try to follow that provision.

Mr. Hogan: I know, and I will say to the Court, frankly, that Mr. Brown did mention furnishing them by Monday but it was just not humanly possible for me to do that by Monday.

The Court: All right. Now, Mr. Hogan, your
 20 plea in abatement and your motion really present the same question, don't they? And that is your right to review the proceedings before the Grand Jury?

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Mr. Hogan: I think so, Your Honor.

The Court: Was there any written transcript of the proceedings before the Grand Jury in this case?

Mr. Brown: I am informed there was not.

The Court: How are you going to review them, Mr. Hogan, if there wasn't any transcript taken? Do you think there was a transcript taken?

Mr. Hogan: I don't know. You see we haven't any way of knowing—

The Court (Interrupting): Well we have the statement that there was not and unless we get some statement to the contrary I don't know how we can find any transcript of the testimony.

Mr. Hogan: I might say to Your Honor that I had no way of knowing whether there was or wasn't. The minutes—I might say that I tried to find out and the minutes were not in the Clerk's Office, and I understood that if there were any minutes they were in the possession of the District Attorney.

The Court: Well the District Attorney now says there was no transcript of the evidence taken, as I gather
21 from Mr. Brown—

Mr. Brown (Interrupting): Yes, Your Honor. And it has been uniformly the practice in this District, long before I came here, never to take any written testimony before the Grand Jury except in very exceptional cases involving a very extended investigation. Now the records in my office—of course I wasn't here when the Grand Jury was convened in this case, but my records disclose only the list of witnesses that appeared before the Grand Jury, and they do not disclose that there was ever any written transcript of any evidence, nor that there was one. I have been informed by persons who testified before the Grand Jury that no reporter was there. Only Mr. Hudgins was present, and the witnesses as they were called. That is the extent of my knowledge on that.

The Court: What is it that you wanted to review, Mr. Hogan?

Mr. Hogan: Your Honor, the reason I want—I want permission to determine or to take the depositions or have

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the witnesses or the Grand Jurors themselves in Court to determine from them—they were there and they heard the evidence—to determine from them themselves whether or not any competent evidence was given to them—competent evidence, not hearsay evidence—on the question of the physical condition of Mrs. Stoll at the time it is
 22 claimed in the indictment she was released.

The Court: Well aren't those witnesses available to both sides? If they are around here you can talk to them. I am here today for a hearing as to what happened. I am not here to get the witnesses here. It is your duty to get the witnesses, and Mr. Brown's duty to get the witnesses. If you want the witnesses, subpoena them here.

Mr. Hogan: Now that is exactly the thing. If the Court will give us permission—

The Court: I am not going to give you permission yet to talk to the Grand Jury. That is another matter. But so far as the witnesses are concerned, if you show me with any degree of conviction that there is any basis to your contention, I am willing to hear the witnesses. What is the basis of your contention? Have you any affidavits now to support it? Now you have seen the affidavits filed in support of the government's motion to—

Mr. Hogan (Interrupting): I have seen that, those affidavits. Now the Assistant—the then Assistant District Attorney has admitted to me that there was no such evidence. Now I understand he has made an affidavit to the contrary. My affidavit counter to his makes an issue of fact upon that subject.

The Court: Have you an affidavit from Mr. Hudgins?

23 Mr. Hogan: The District Attorney has.

The Court: Well, I thought you said your affidavit to the contrary makes an issue of fact.

Mr. Hogan: My own affidavit, countering his affidavit, makes an issue of fact—

The Court: Well, why don't we get Mr. Hudgins here and see what he has to say? Isn't that a very good idea, Mr. Hogan?

Mr. Brown: I certainly have no objection.

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Mr. Hogan: Let's not restrict it to Mr. Hudgins only—

Mr. Brown (Interrupting): Now I certainly **am going** to object to dragoon out of witnesses in advance of the trial the evidence that the government expects to introduce.

The Court: Well, as I gather, the only statement that Mr. Hogan is going on now is some statement which Mr. Hudgins made to him. Now you have an affidavit from Mr. Hudgins—

Mr. Brown (Interrupting): Yes, given Monday.

The Court (Continuing): Given Monday. And if there is any conflict between what Mr. Hudgins stated in his affidavit to you and the statements he is alleged to have made to Mr. Hogan, we had might as well straighten those out.

24 Mr. Brown: I certainly have no objection.

Mr. Hogan: Well, if Your Honor please, I think it goes a little bit farther than that. I would like the privilege of bringing the witnesses who testified before that Grand Jury and see what they themselves have to say. Now, if Your Honor please, that clause or phrase embodied in the indictment that she was not liberated unharmed means the difference between a death penalty and a penalty upon conviction of some lesser sentence.

The Court: Of course, the case is not being tried at this time. The jury would have to receive that evidence.

Mr. Brown: Certainly.

Mr. Hogan: But the cases hold, if Your Honor please, that if there wasn't any evidence to justify that charge being embodied in the indictment, then it should not be the prerogative of a petit jury to gamble upon a man's life by making it possible for them to give him a death sentence if they otherwise found him guilty, because—

The Court (Interrupting): Now, let me interrupt you right there. I am not trying at this time to determine whether or not the evidence would warrant the return of such a verdict. I am not trying to find out what all the evidence before the Grand Jury was. As I understand the rule it would be merely, "Was there any evidence be-

25 fore the Grand Jury which would warrant this allegation in the indictment that she was not returned un-

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harmed." Is that correct?

Mr. Hogan: That is what we are contending, Your Honor.

The Court: Now I am not trying to find out how much evidence was to that effect, or how much evidence was against that effect.

Mr. Hogan: Well, any evidence. Was there any evidence?

The Court: Or any evidence. Now I am supported with the affidavits this morning, I am supplied with the affidavits this morning of Mrs. Stoll which has been filed in evidence. If that affidavit is correct, I don't have to go any further do I?

Mr. Hogan: If that affidavit is correct, I would say that that would be a scintilla, but--

The Court (Interrupting): Well that's all I need, isn't it?

Mr. Hogan: But I--

The Court (Interrupting): Isn't that all I need? A scintilla?

Mr. Hogan: No. The defendant has the right to cross-examine that witness or any other witness who might have appeared because at the most a Grand Jury hearing is an ex parte proceeding.

26 The Court: That's correct.

Mr. Hogan: The defendant is not ordinarily or usually there. The witnesses are paraded before that body and I may say that very often is the case that the rules of evidence are flaunted aside and hearsay evidence is admissible, and that is all right in a minor case, but here we have a life case—a man's life is at stake. Therefore, under the weight of the authorities that I have, when a showing is made that there wasn't any evidence—not some competent and some incompetent, but when there was not any evidence whatsoever as a basis for that charge, the Court should permit an inquiry into the witnesses who came before that Grand Jury; and not only the witnesses but the Court should review the testimony of the Grand Jurors.

The Court: What is your weight of authority?

Mr. Brown: I certainly do not subscribe to such a

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theory.

Mr. Hogan: Well one of the cases—I take it that the Court will indulge me a little bit on that.

The Court: I will spend some time but I am not going to spend all day on it.

Mr. Hogan: I am not going to ask you to. I will read from two cases and refer and comment on other cases.

27 The Court: I notice you have referred in your memorandum to *McKinney v. United States*, 199 Federal. Isn't that against you?

Mr. Hogan: The general principle is against me, but in the opinion itself it says where there is an infamous crime or some special circumstance, the Court should permit that inquiry, but I am relying chiefly upon the statements made by Judge Sanborn in that case, wherein he points out much better than I would be able to, or any other lawyer, wherein the majority opinion in that case is wrong, and I think the reasoning of Judge Sanborn in that case is plausible whereas—

The Court (Interrupting): Do you expect me to follow a dissenting opinion in a case rather than a majority opinion?

Mr. Hogan: I expect this Court to recognize that probably in some majority opinions that majority opinion might be wrong. It was wrong in the defendant's case in the Circuit Court of Appeals for the Northern District of California. It was wrong in the District Court out there and they had to take it back. So I certainly do feel that this Court can be shown that the majority opinion, not only in the *McKinney* case, but in some other cases, turned out to be wrong and the dissenting opinion may have as much weight as probably the majority opinion.

28 The Court: All right, go ahead.

Mr. Hogan: In the case of *Brady v. United States*, which was from the Eastern District of Kansas, James E. Brady and others were convicted of using the mails to defraud and of conspiracy to so use them. "James Brady and Arthur Baxter, together with other persons, were charged with by indictment of violations of Sections 215 and 37 of the penal code. The indictment contained 66

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counts. The first 65 counts charged a violation of Section 215, and the 66th count charged a violation of Section 37 of the penal code. Brady and Baxter were tried jointly. Brady was found guilty on counts 1 to 38 inclusive, counts 41 and 42, counts 44 to 52, inclusive, and counts 54 to 66, inclusive. * * * Brady was sentenced to the penitentiary as follows: On the first count, five years * * * . The rest of that is not important.

(Continuing): "The conspiracy count, after alleging the conspiracy, set up as overt acts the use of the mails in the execution of the scheme to defraud alleged in counts 1 to 65, inclusive.

"Brady and Baxter filed a motion to quash the indictment, setting up, among other grounds, that there was no competent evidence before the grand jury of the offenses charged." Now that is what our contention here is.

29 "On the hearing of the motion to quash, counsel for defendants Brady and Baxter undertook to prove that there was no evidence whatever before the grand jury showing that the defendants used the mails in executing or attempting to execute the scheme to defraud. At the hearing the following occurred:

"The Court: Well, the court has already ruled, but for the sake of the present record will repeat his ruling, that upon this inquiry the only matters concerning which the court will hear testimony, or the only allegations concerning which he will hear testimony, are that no testimony of any kind was offered to the grand jury, or that the only witnesses who testified before the grand jury were not in law competent witnesses.

"Mr. Krauthoff: We desire to note an exception to the ruling of the court and to inquire for our own guidance whether the court intimates that we cannot prove that there was no evidence as to some material link in the chain of evidence necessary to sustain the indictment.

"The Court: Yes; that is a very clear inquiry, and my answer will be equally clear. I think you cannot offer testimony to show that as to some particular link there was no testimony before the grand jury. That is my view of the law, and I think that view is shared by the

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30 better considered decisions of the appellate court.

"Mr. Krauthoff: You mean we would not be permitted to prove that there was no proof that the letters were mailed?

"The Court: I do mean that, Mr. Krauthoff.

"Mr. Krauthoff: Or there was no proof that they were signed by the parties against whom they were offered?

"The Court: When I answered your general question, I certainly answered your specific question.

"Mr. Krauthoff: We note exceptions to the rulings of the court. * * *

"Mr. Krauthoff: And now, to make our record clear, we offer to prove by the witness on the stand and by others we have here, that there was no evidence offered before the grand jury that the letters had been mailed, nor that they were written by any of the parties to the suit.

"The Court: You object to the offer, Mr. Skinner?

"Mr. Skinner: We object to the offer as not within the scope of the inquiry which is now being conducted, nor within the scope of the court to hear, and determine, and pass upon.

"The Court: The objection is sustained.

31 "Mr. Krauthoff: To which we except."

"The gist of the offense under Section 215, upon which counts 1 to 65 are based, is the use of the mails in executing or attempting to execute the scheme to defraud, and not the scheme itself.

"In *Mounday v. United States*, 225 Fed. 965, the court said:

"It has been the uniform holding of the courts that the gist of the offense is the use of the post office in the execution of the scheme to defraud and not the scheme itself."

Then it talks about what the crime of conspiracy consists of. (Reading):

"From the foregoing, it appears that the defendants were denied the right to show in support of their motion to quash that there was no evidence whatever before the grand jury of the acts and things which constituted the gist of the offenses charged in counts 1 to 65, inclusive, and

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of the overt acts charged in count 66.

"The authorities are not in harmony on the question here presented. In 31 Corpus Juris, page 808, Section 385, it is said:

"It is generally held that an indictment will not be quashed or set aside on the ground of insufficiency of evidence where it appears that some witnesses were examined by the grand jury, or that the grand jury had before it some documentary evidence, unless the evidence before the grand jury appears to have been palpably insufficient. Indeed in some decisions the rule is announced that the courts can make no inquiry whatever into the sufficiency of the evidence passed upon by the grand jury. According to others, however, where it is made to appear by competent testimony that the indictment is unsupported by any evidence whatever, or is supported only by evidence clearly incompetent and which would not be admissible at the trial, or when there is wanting an essential link in the proof of the charge, it will be quashed, dismissed, or set aside on motion."

"It is the settled law of this circuit, we think, that an indictment will be quashed where there was either no evidence whatever, or no competent evidence of the offense charged, presented to the grand jury." Citing *Nanfita v. United States*, 20 Fed. (2d) 376, and other cases upon which I rely, and the *McKinney* case is also cited, and the *Murdich* case, and the *Anderson* case.

"We think the same rule should be applied where a grand jury returns an indictment without any evidence whatever before it of a separate, distinct and essential element of the offense, such as the use of the mails under

Section 215, and the overt act or acts under Section 37." Citing *People v. Price* and others.

In *People v. Price* the court said:

"The question presented for our decision is whether a grand jury can find an indictment without full proof of the crime, or where an essential link in the proof is missing.

"The Penal Code provides that a person who, after having been convicted under the laws of any other state of a crime which, if committed within this state, would

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be a felony, commits any crime within this state, is, on conviction, subject to additional imprisonment. In the case at bar the imprisonment would be double. The rules of criminal pleading require that the prior conviction be alleged in the indictment to be of any avail, as it is a substantial and component part of the crime.

“In the Harrington case the court held that the legislature cannot dispense with these allegations. The indictment is required to set forth the former conviction, and to aver that the defendant was the former convict.

“On the trial of such an indictment there must be proof of the identity of the defendant as the defendant in the prior conviction.

“The grand jury found the pending indictment without any testimony connecting the defendant with the
34 Georgia conviction. In doing so they violated the well-settled rules of law. The doctrine that a grand jury may indict without evidence, if tolerated, would establish a precedent subversive of the liberty of the citizen and his safety and security, and the good name and fame of any innocent person might at any time be blasted.’

“We conclude that the court erred in overruling the offer of proof above set out.”

Now—

The Court (Interrupting): Now Mr. Hogan, I don't believe we are going to find much disagreement as to what the law is on that.

Mr. Brown: I will agree with that—certainly.

The Court: Certainly if there was no evidence at all before the grand jury, the indictment ought to be quashed. The question we have before us is the procedure, isn't it, to determine that question? Are we supposed to, on a motion of yours, sit down here and hear all of the witnesses who appeared in this case? In other words, to try this case now and then try it over again a second time?

Mr. Hogan: No, sir.

The Court: Well don't you have to make a showing before you are entitled to have the proceedings before the grand jury reviewed by this court?

Mr. Hogan: And we have made that showing.

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35 The Court: Where is your showing? That is what I want to find out?

Mr. Hogan: The plea in abatement by the defendant charges that—

By the Court (Interrupting): Well, you can charge anything in the world in your plea but I want some affidavits to back it up. That is what I mean by a showing.

Mr. Hogan: His own plea in abatement is verified, Your Honor, which says—

By the Court: "On information and belief," that doesn't prove anything.

Mr. Hogan: No; he says, if Your Honor please, "of his own knowledge he knows that the prosecuting witness, Mrs. Alice Stoll was not harmed or in a harmed condition at the time she was claimed to have been liberated."

The Court: And I have the affidavit here of Mrs. Stoll which is exactly to the contrary.

Mr. Hogan: That is correct. And that, Your Honor, makes an issue of fact which should open the door to bring in the grand jurors themselves—

The Court (Interrupting): Now Mrs. Stoll says she testified to that fact before the grand jury. It doesn't make any difference how much he would testify to the contrary, that would be sufficient to support the indictment, wouldn't it?

36 Mr. Hogan: It would, unless we had a chance to cross-examine her and see and bring out, not only the bare naked—you can't try this issue on a motion to quash or plea in abatement on mere affidavits because you should have the right to make inquiry and cross-examine that person or persons.

The Court: Well now I will give you any opportunity you wish to present any affidavits you want to in the record. You have made some statements about Mr. Hudgins. His affidavit is already in the record, filed by the government. If you want to file an additional affidavit for Mr. Hudgins which would support which you think he has previously said to you, I will be glad for you to procure it and file it. Unless it shakes to some extent the affidavit already filed, it seems to me that Mr. Hudgins' statement

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is rather controlling in this matter. He was the District Attorney—the Assistant District Attorney who conducted the investigation before the grand jury. He knows what witnesses appeared; he knows what they testified about. Unless you have some evidence from him that what he says in the government's affidavit is incorrect, why should we go any further?

Mr. Hogan: If Your Honor please, that is exactly why I say Mr. Hudgins can't make up his mind as to exactly what did go on there. Only last Thursday—and

I might say he made that statement before he knew
37 that there was any plea in abatement or motion to quash that Mrs. Stoll had been liberated not in an unharmed condition. He did not at that time know that such a plea had been made, and he came up to me on the street—he volunteered the information—I didn't seek him out because, frankly, at that time I did not know who had presented this case to the grand jury. And he came up to me and volunteered that he was the one who had presented the case to the grand jury, and I asked him then, not once but twice, whether or not anybody had testified before the grand jury on the point of whether or not she was liberated unharmed, and he said there was not.

Now I assume that his memory was as good then as it was on October 4th when he made this contrary affidavit. Of course, I may say when he made the contrary affidavit he had probably read the newspapers and I know that he had conferred with Mr. Brown, the District Attorney.

Mr. Brown: He had not.

Mr. Hogan: Well he told me that he had.

Mr. Brown: I talked to him—

Mr. Hogan (Interrupting): Mr. Brown will you deny that he came out here and signed that affidavit?

Mr. Brown: I certainly will deny that.

Mr. Hogan: Mr. Brown, will you deny that at your instance he did sign it?

Mr. Brown: Certainly it was at my instance he
38 signed it. I prepared the affidavit as disclosed by my records and sent it over to him and he signed it.

Mr. Hogan: Well my point is that after Mr. Hudgins

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realized the importance of—

Mr. Brown (Interrupting): I suggest that Mr. Hogan should have gotten an affidavit from Mr. Hudgins at that time.

The Court: Let's review here very briefly the affidavit of Mr. Hudgins—I am not going to read it all. "Claude Hudgins states that he was in charge of the presentation of the evidence that was presented to the grand jury who returned this indictment, and he testified that the following witnesses appeared * * *. The witnesses were duly sworn. John E Tarrent, attorney, testified as to delivering the ransom money—"

Mr. Hogan (Interrupting): May I comment upon that. What John Tarrant says does not bear directly or indirectly upon the point of whether—

The Court (Interrupting): All right, I am going through it all. We will get to the one that you have in mind. "John M. Ridge testified as to the receipt of the ransom money by the railway express agent—

Mr. Hogan (Interrupting): That is not relevant.

The Court (Continuing): "W. L. Alma, manager of the railway express agency testified that he received
39 the package from Ridge. Arch Creager, officer of the Louisville Police Department, who testified that he received the original ransom note and delivered it to John Messmer of the Louisville Police Department; that John Messmer appeared and testified to that fact—

Mr. Hogan (Interrupting): Well that is about certain facts as to the home.

The Court (Continuing): "That Berry V. Stoll appeared and testified as to the finding of the ransom note on the bed and that there were spots of blood which had been recently spilled—

Mr. Hogan (Interrupting): I would like to comment right there that even in that statement of Mr. Hudgins that Berry V. Stoll appeared before the grand jury, I challenge the District Attorney to point out to me wherein Mr. Berry V. Stoll testified as to anything or, rather, what Mr. Hudgins said he testified about her physical condition. It is silent as to that.

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The Court: Here is where it gets to your point, I think. "The affiant further states that Mrs. Alice Speed Stoll appeared and testified that on October 10, 1934, she was kidnapped by Thomas Henry Robinson, Jr. after having been brutally struck twice with a lead pipe on and about her head, causing her to lose a great deal of
 40 blood; he testified her hands were bound with wire; that she was placed in the bottom of a car and taken to a city she later learned was Indianapolis; that she was held captive for a period of six days; that on numerous and different occasions during that captivity her hands were tightly bound and her mouth was gagged and she was locked in a closet in the apartment in Indianapolis; that at the time of the payment of the ransom money to the kidnapper by his then wife, Mrs. Frances Robinson, she was released, suffering from the severe beating which she had received; that it was necessary that she have, and she did have, medical attention; that said wounds were not healed at the time of her release and that up to the time of her testimony she was suffering great pain and injury as the result of the brutal treatment and wounds she had received from Thomas Henry Robinson, Jr."

Mr. Hogan: Now I am well aware that Mr. Hudgins did in that affidavit make that statement, and I am just as certain that he made the contrary statement to me on September 30th. That goes to the credibility of—

The Court: Let's have Mr. Hudgins' counter-affidavit if you have it—if this is not correct.

Mr. Hogan: I can't present to the Court any assurance whatsoever that I can obtain Mr. Hudgins' affidavit of anything contrary to that affidavit which you have
 41 just read, because he evidently changed his mind from September 30th to October 4th.

The Court: What am I to go on? What he says now?

Mr. Hogan: No, I don't think you can go on what he says now any more than what he said a few days before that. Here is what I say the Court should go on: Mr. Hudgins says now that there was such evidence. He said four days previous to that that there wasn't. I say, let's get the one witness into this court who says that he could

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say that, and let's have her interrogated.

The Court: Who is that?

Mr. Hogan: Mrs. Stoll.

Mr. Brown: Now we are coming to the whole purpose. I might say that Mr. Hogan must have known that the statements he alleges Mr. Hudgins made was the very essence of his case. He does not take an affidavit from Mr. Hudgins, but he comes in with affidavits which he now says he made of what Mr. Hudgins said to him. Now we are coming to his real purpose, and that is to get Mrs. Stoll in here in advance of the trial when we have here affidavits of four witnesses setting up the whole chain of circumstances as to the whole brutal crime.

The Court: I am willing to have Mr. Hudgins come here and testify to anything you want him to testify
 42 as to this affidavit. If you think this affidavit does not set out the correct facts, and if you want to introduce any testimony about what he said to you which would attempt to discredit his affidavit, I will be glad to hear it. But with that affidavit being accepted as correct or with his testimony substantiating the affidavit, I have no reason to go any further. I am not reviewing the action of the grand jury. I am not trying to decide whether the grand jury was right or wrong in returning the indictment. All I am trying to decide now is whether or not there was any evidence which would support the allegations contained in the indictment and from what Mr. Hudgins affidavit shows, if that is the fact, there certainly was.

Mr. Hogan: Well if Your Honor please, I have no assurance that way, and I might say that I don't believe I can get Mr. Hudgins to go behind the affidavit that he has made here—

The Court (Interrupting): Do you want him on the stand?

Mr. Hogan: I don't believe that it would accomplish any purpose to that effect. I may say that, frankly, I—

The Court (Interrupting): Well all I can say is, if you want him on the stand, we will hear him. If you
 43 don't want him on the stand, why I will accept his affidavit as correct. If you want to test his affidavit

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by having him personally testify, we will call him and have him testify.

Mr. Hogan: I think that should be done, to clear up whether or not he made that statement to me.

The Court: See if Mr. Hudgins will come out.

Mr. Hogan: And I might say to Your Honor we are not on a fishing expedition—we are not fishing for information. We are just trying to find out whether there was any basis for that particular element of the crime being embodied in the indictment.

While there is a lull in the proceedings, I may call attention of the Court to the fact that the defendant made an application to proceed in forma pauperis, and I don't find in the record the court's ruling on that. I assume that by appointing counsel the Court intended to sustain that motion.

The Court: Yes, the motion was sustained. I don't know that any order has been entered to that effect yet.

Mr. Hogan: I would like for that order to be entered.

Mr. Beckham: It can be accomplished by a separate order entered as of today.

Mr. Hogan: That will be fine, Mr. Beckham.

44 The Court: Now, Mr. Brown, while we are waiting on Mr. Hudgins to come out, we can discuss this motion the government has made to appoint physicians to examine the defendant.

Mr. Brown: Yes, Your Honor. My point, Your Honor, is that I place no reliance on the statement of the defendant as to his condition now or at any time and I think, in view of the ruling of Judge Roche and the statement of Mr. Hogan and Robinson the other day, that there should be some affirmative showing in the record before any plea is received from this defendant, of his mental condition.

Mr. Hogan: If Your Honor please, I think we can reach that, first, by a motion to strike Mr. Brown's motion, and by a written waiver from the defendant—

Mr. Brown (Interrupting): That won't be sufficient.

Mr. Hogan (Continuing): By the defendant and by his counsel that he at this time expressly waives his right to claim or contend that he is now at the present time insane.

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The Court: He took back his plea of guilty which he made before because he said he might be insane. He could take this back the same way.

Mr. Hogan: He was permitted to take back that
 45 plea, not because of that fact alone but because Judge Roche specifically held that he was not supported by counsel.

The Court: Well that was a double-barreled opinion, wasn't it? The opinion placed a great deal of reliance upon the fact that he was mentally incompetent.

Mr. Hogan: The opinion specifically held that there was no waiver of right to counsel in there.

The Court: But he also said it was the Court's duty, didn't he, to investigate into the question of sanity?

Mr. Hogan: Where there is no waiver.

The Court: When that matter is brought to the Court's attention?

Mr. Hogan: That is true, but it intimated that had there been a waiver, a lawful waiver, on that question, the situation would have been otherwise. And I may say in our motion to strike the government's motion for appointment of psychiatrists, we claim that the question of his sanity is now *res adjudicata* because the court out there, I think, has established his presently sane condition.

The Court: How?

Mr. Brown: I don't see anything that's in that.

Mr. Hogan: While that opinion may not specifically rule on that point, I think it very strongly intimates that.

46 Mr. Brown: I don't want to rely on intimation.

Mr. Hogan: Nor does the defendant, Mr. Brown.

Mr. Brown: Then he should have no objection to it.

Mr. Hogan: The government contended in that pleading in which its own agent was a party that he was sane and introduced some four of its institutional psychiatrists to establish that fact.

Mr. Brown: I might say that I have no personal doubt of the defendant's sanity at this point or in 1934 or in 1929.

Mr. Hogan: Do you by that statement admit, then, that he is presently sane?

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Mr. Brown: I admit nothing. I say in my personal opinion the defendant is sane now, that he was sane in 1934, and that he was sane in 1929. But, in view of Judge Roche's opinion, I feel that we should have some showing in the record as to his present mental condition.

Mr. Hogan: Will you now raise that personal opinion to the dignity of a stipulation that he is sane?

Mr. Brown: I don't know that we could accomplish anything with this defendant by stipulation.

The Court: Do not the authorities authorize an examination of the defendant?

47 Mr. Brown: It undoubtedly does.

The Court: Are there any authorities to the contrary, Mr. Hogan?

Mr. Hogan: I can find no place in the statutes or code for the appointment of anybody to test defendant's mentality, except what was said by Judge Roche that it was the Court's duty and not by a doctor.

The Court: Well how is the Court going to do it? How can he do it without some help by the doctors? I am not an expert on sanity or insanity.

Mr. Hogan: I know that. I don't think it means he cannot waive that. He is represented this time by counsel, and before he wasn't.

Mr. Brown: The court room was alive with counsel interested in Mr. Robinson before.

Mr. Hogan: Well what you say has been specifically overruled by a court of competent jurisdiction, Mr. Brown.

Mr. Brown: They later say that friends of the family and friends of the court on that side of the court room on May 13, 1936, were simply alive with counsel.

Mr. Hogan: Mr. Brown, what you say or what I may say on that point has no bearing because it has been judicially decided to the contrary what you say.

The Court: I gather, though, Mr. Hogan, that
48 you haven't any authority to present in support of your motion to strike the government's motion for the appointment of physicians?

Mr. Hogan: Except, Your Honor, that there is no provision that I can find in the statutes for it, and—I have

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looked for it.

The Court: Have you authorities to support your motion for it, Mr. Brown?

Mr. Brown: Yes, Your Honor. I think the leading authority that I have been able to find is the Youtsey case in 97 Fed. (2d) 937, and the Chism case—I said “97 Fed. (2d),” that should be 97 Fed., and the Chism case which I will get right now.

The Court: Can't you send someone for that and read us the pertinent part of the Youtsey case?

Mr. Brown: In the Youtsey case which arose from this District—

The Court: This circuit or this district?

Mr. Brown: Both this circuit and this district. At that time Kentucky was still one district. It was an appeal from Judge Barr's decision, and the Circuit Court of Appeals' decision was rendered by Judge Lurton, and Judge Severens and Judge Clark, District Judges. It is quite a long opinion but I will read that portion of it that is pertinent. It starts with this quotation:

49 “If a man in his sound memory commits a capital offense, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such frenzy, but be remitted to prison until that incapacity be removed. The reason is, because he cannot advisedly plead to the indictment.”

“To the same effect are all the common-law authorities.

“While an insane man cannot even plead to an indictment, and counsel, having reason to suppose their client too insane to stand a trial, should interpose and make such objection before arraignment, yet it is not technically waived by failure to object before arraignment, and the defense may be interposed after arraignment in bar of a trial.”

Then there is a list of authorities (Continuing):

“For even stronger reasons, if it appears after arraignment, and before trial, that the prisoner is probably not capable of making a rational defense, the proceedings should stop until the sanity of the prisoner is determined or restored. Such an issue, when presented, goes to the funda-

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mental right of the court to try the main issue, "not guilty." If present insanity does not appear until the trial has begun, the court may submit the objection to the jury **50** along with the principal issue, requiring a special verdict as to the competency of the defendant to understand the proceedings and intelligently defend himself.

"Every person of the age of discretion is presumed of sane memory until the contrary appears, which may be, either by the inspection of the court, by evidence given to the jury who are charged to try the indictment or, being a collateral issue, the fact may be pleaded and replied to, and a venire awarded, returnable instant, in the nature of an inquest of office. And this method, in cases of importance, doubt, or difficulty, the court will, in prudence and discretion, adopt."

"The prima facie showing made by the affidavit of counsel and physicians was that the defendant's mind and memory, as a consequence of epileptic attacks, had become so impaired as that he was unable to advise his counsel as to his defense, or recall transactions which ought to have been within his knowledge, and could not 'remember transactions from day to day,' and that he was unable, in consequence of his impaired mind and memory, to testify for himself. This prima facie showing was made by persons of weight and respectability, and upon that showing the court was asked to make such examination and inquiry as would further tend to throw light upon the question of the fitness of the defendant to be put on his trial at that term of the court.

51 "Having the right to exercise its discretion as to the mode which the court should investigate the mental capacity of the accused to understand the proceedings against him, and rationally advise with his counsel as to his defense, we are confronted with the question as to whether the court in any way investigated and decided the issue thus tendered by the counsel for the accused. Undoubtedly the court was bound to entertain the objection and dispose of it in some way. It is suggested that the court did so by personal inspection, and in that way satisfied itself of the competency of the accused to rationally

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conduct his defense. Unless a basis for the confinement of the accused under Section 4851 is sought, it may be conceded that it was competent, where the objection is urged only in bar of a present trial, for the court to determine such an objection by inspection and other private investigation as we are asked to here infer was had. Such a practice finds some sanction under statutes which make it the duty of the court to submit the issue of present insanity to a jury or to a commission or to determine it himself.

"Having had the question tried and considered by the trial judge in the manner stated, and then by the jury along with the principal issue—"

They quoted another case. (Continuing):

52 "The Supreme Court of the State of New York has held that there was no abuse of the discretion of the court in refusing a preliminary inquiry, and that there was on reason for reversing the cause for such a preliminary trial. The contrast between the proceedings in the case above and those in the court below is quite striking. The fact that the trial court gave consideration to the issue of present insanity, and determined it by personal inspection, aided by the counsel, opinion, and advice of the jail physician and others, and that it also submitted to the jury the question of the present sanity of the accused, appeared affirmatively upon the record in the Webber appeal."

And this case was reversed by the circuit court because the court didn't have something to that same effect in his mind.

Now the same thing is true of the Chism case which is long and holds the same thing. I will just give you that citation, United States v. Chism, 149 Fed. 284.

The Court: Where is that from?

Mr. Brown: That is an appeal from the District Court of Alabama.

The Court: A circuit court decision?

Mr. Brown: No, Your Honor; it is a district court opinion. The only circuit court opinion was the Youtsey case. That is the case that I rely on, and out of an abundance of caution, and in view of the past his-

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tory of this case, I feel some affirmative showing should be in the record, other than the statement of this defendant so he cannot take it back whenever he wants to—before any plea is accepted.

The Court: I feel that in view of the—

Mr. Hogan (Interrupting): If Your Honor please, let me—do you rely upon the Youtsey case, Mr. Brown?

Mr. Brown: Yes I do.

Mr. Hogan: Well I desire to point out that that case got off on this footing, that where the defendant was sound at the commission of the crime, but goes mad between that time and the date of the trial, it then becomes the duty to inquire as to his sanity. We have no such condition here, and for that reason that case is not controlling in this case.

Mr. Brown: He was claiming he was insane at both times.

The Court: It seems to me that, irrespective of decisions on the subject, we have a situation here which demands some action by the court. This defendant was arraigned on this indictment, and pleaded guilty, and that plea has been set aside by another court on the ground that

at the time of defendant's plea he did not have counsel.
 54 and also there was a question of his sanity. That opinion points out very definitely that it is the duty of the court, when that question is raised, to investigate the question of the defendant's sanity before he takes the plea. Well now if at one time when he makes his plea he later raises the question of insanity, he certainly can raise it again when he makes his plea the second time, and I rather think that in following that decision of Judge Roche in sustaining the writ of habeas corpus, it is the duty of this court to make that investigation.

I overrule the objection of the defendant to—or, rather, the motion to strike the government's motion for the appointment of physicians, and I sustain the government's motion for the appointment of physicians.

Mr. Hogan: Let the record show an exception to the court's ruling on that.

The Court: Yes. Now, Mr. Hogan, you have asked for a rule here to have the United States show cause why

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it should not reply to the plea in abatement. Haven't they replied to the plea in abatement?

Mr. Hogan: No. The only thing that they have done is filed a motion to strike. Now that procedure, I may say, was followed in the case of the Evaporated Milk Association v. Roch, which was a mandamus case. The motion

for plea in abatement was overruled and in that case
55 they went to the Circuit Court of Appeals and got a mandamus against the trial judge. It was also followed in the case of United States v. Johnson.

The Court: Well what is it you want them to do? Deny those allegations in your plea?

Mr. Hogan: Yes, sir.

Mr. Brown: For the purposes of a legal motion, I didn't want to admit the deficiency of any statement contained in that plea in abatement. I think I have taken the method that has been approved certainly by the Supreme Court in the Almstead case.

The Court: Well I will sustain the motion that the government be required to plead to the plea, and hold that their present plea is sufficient. I don't see why they should be required to plead the way you want them to plead. They can plead any way they want to.

Mr. Hogan: Well, after the Court's ruling of their present plea being sufficient, I may also save an exception.

The Court: I believe that the authorities sometimes hold that it is assumed by the Court that the facts stated in the plea in abatement are denied. For the purposes of this hearing, I am willing to make that assumption.

Mr. Brown: And I will certainly say that they
56 are denied. That is, all facts that are properly denied.

Those that are stated on information and belief—

The Court: The affidavits filed in support of their motion to strike certainly take the position that the allegations in the plea in abatement are incorrect.

Mr. Hogan: I may say that the modern or present day method for that is by the motion for a rule.

The Court: Well I sustain your motion.

Mr. Brown: And you held my response has been sufficient?

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The Court: Yes.

Mr. Hogan: And to that part I except. Rather, the defendant excepts to that part of the rule.

The Court: Is there any word from Mr. Hudgins?

Mr. Brown: He is here.

CLAUDE HUDGINS was called as a witness by the Court and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by the Court.

Q. Mr. Hudgins, some question has arisen here with reference to the affidavit which you gave in support of the government's motion to strike the plea in abatement which has been filed in support of that motion, and Mr. 57 Hogan has filed his affidavit with reference to certain statements which he claims were made by you to him, and apparently there is some inconsistency between the two and we wanted to straighten out the facts. Mr. Brown, you may take him on your affidavit, if you wish, and then Mr. Hogan can take him on his.

Mr. Brown: Suppose I hand you Mr. Hogan's affidavit and my affidavit—

The Court (Interrupting): Here they are. Let him read them both. I expect we are only interested in the question about Mrs. Stoll, aren't we?

Mr. Hogan: That's all, Your Honor.

Mr. Hudgins: Let me read Mr. Hogan's first (Reading).

The Court: Now read the one the government has there—just with reference to Mrs. Stoll.

(Mr. Hudgins reads.)

Mr. Brown: I think Your Honor could take judicial notice of the fact that to be hit in the head with a lead pipe ordinarily does not cause no harm.

Mr. Hogan: Now, if Your Honor please, may I call your attention to the Parker case, among which facts were that they had taken Wendell from Brooklyn, New York, to New Jersey, and had burned his bare feet with matches in

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58 an endeavor to try to get him to admit that he was the perpetrator of the Lindbergh kidnapping, and they tied him and tortured him for several days, but when they liberated Wendell, he was in an unharmed condition. Then the question arose as to whether or not there was a death penalty clause in the indictment, whether or not the trial court had erred in not having the trial in that case in the county in which the crime is said to have been committed, and the Court very definitely pointed out that it was not a death case because the victim had been liberated in a sound condition. And they said in that case that Congress seems to have preferred a live and unharmed victim to a dead victim, and that is the reason why that question arose.

The Court: Do you wish to ask him any questions, Mr. Brown?

Mr. Brown: No. You may ask him the questions if you want to.

Examination by the Court.

Q. Mr. Hudgins, you were the Assistant United States District Attorney at the time the indictment was considered by the grand jury in this case?

A. Yes, sir.

Q. And you have seen the affidavit filed by the government as to the substance of what Mrs. Stoll testified to before the grand jury. Is that correct?

59 A. That is correct, as I remember it, yes, sir.

The Court: Now, Mr. Hogan, do you want to ask him anything?

Mr. Hogan: Yes, sir.

Cross-examination by Mr. Hogan.

Q. Mr. Hudgins, you have offices at the present time in the Kentucky Home Life Building, do you not?

A. Correct.

Q. Do you recall Thursday afternoon, September 30th, 1943—last Thursday—coming up and volunteering to me in front of the Fifth Street entrance to the Kentucky Home Life Building that you had participated in presenting this case to the federal grand jury?

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A. No, I did not go up to you voluntarily. I was going out of the building and you were coming across from the courthouse, and I said something to you—I believe I asked you if you were defending in that case; and then I started on, after making a few remarks, and you stopped me about her being hurt while in captivity. I told you at the time that my recollection wasn't real clear on that and that I would have to refresh my recollection before I could answer that question. I believe that was the substance of our conversation. Then the next day you came to my office
60 and asked me to make an affidavit. So I told you I still hadn't had time to—I had been sick and busy and I still had not had an opportunity to refresh my recollection, and that I would have to do that first. You later came up and I told you that I had refreshed my recollection by looking over some memorandums and looking at the list of witnesses who had been—who had testified before the grand jury, and I still was not satisfied that she was hurt while in captivity, but I did remember that she testified that she was still suffering at the time she was released from captivity from this wound that she received before she was taken away; and that she had to go to the doctor after she was released. Now that is the sum and substance of it.

Q. Well now let's confine the conversation between you and me on the sidewalk in front of the building there last Thursday. I will ask you if you didn't state to me that you were the one who had presented the evidence to the grand jury—

A. (Interrupting) You asked me if I was, and I told you yes.

Q. I will ask you if you didn't tell me that voluntarily, and that I did not know that until you had made that statement?

A. You asked me that and I told you yes.

Q. And if, after we had talked some time there,
61 you didn't make the statement that Mrs. Stoll did not mention before the grand jury anything about her condition at the time she was released?

A. I thought you were talking about being injured or hurt during the time she was up there, and I told you then

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that I wasn't sure about that, and I told you the last time you talked to me that I still wasn't sure and couldn't answer that question until I had refreshed my recollection. And I told you that, after refreshing my recollection, I couldn't tell whether she said she was injured while she was there, but she was complaining of injury after she was released. That is what she was complaining of after she got down here.

Q. I am aware that you incorporated that statement in your affidavit, but I am confining the question to last Thursday afternoon.

A. I told you my recollection wasn't clear on it and that I would have to refresh my recollection on it before I could tell you one way or the other.

Q. I will ask you if you didn't say these words, or words to this effect, "As I recall, she did not testify that she was hurt when she was released?"

A. I may have said that, but I told you that I was not refreshed on it and what I thought you had reference to was that she was hurt up there at the time and not with
62 reference to the previous injury.

Q. But you do recall making such a statement?

A. I recall making the statement to you that day that I wasn't sure but my recollection was that she didn't make the claim that she was hurt while in captivity. Then I said that it struck me, in talking there with you, that possibly she was knocked down once up there, but that I was not sure about that; and I told you the last time I talked to you that I still wasn't sure about it.

Q. Now then I talked to you on Saturday and urged you to make an affidavit to the effect of what you had told me previously. That is true, is it not?

A. You had an affidavit prepared there; it wasn't what I told you but it was what you wanted me to tell you.

Q. You didn't sign that affidavit did you?

A. No I did not.

Q. Now I will ask you if you didn't tell me on that occasion that Mr. Brown had talked to you and wanted you to make a statement?

A. I told you that Mr. Brown wanted me to make a

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statement, and that I was going to have to refresh my recollection before I could make either of them; and after I refreshed my recollection I told you that I would make a statement of the facts as I remembered them.

Q. And you did, of course, subsequently make this
63 affidavit and furnish it to Mr. Brown, the now United States District Attorney?

A. Yes.

Q. Now at the time you talked to me on Thursday you did not know what the defendant was relying upon in his plea in abatement?

A. Well you told me, I think—if I remember right, you told me what he was relying upon.

Q. But up to that conversation you had not any knowledge of what was contained in that plea in abatement?

A. No.

Cross-examination by Mr. Brown.

Q. I talked to you over the telephone, didn't I?

A. Yes.

Redirect Examination by the Court.

Q. The facts then, Mr. Hudgins, as you recall them after having refreshed your recollection, are as they appear in your affidavit filed by the government?

A. That is correct.

Q. All right.

64 **The Court:** Now, doesn't that conclude the question?

Mr. Hogan: Now I am not the judge—I am legging for the defendant and I am—

The Court (Interrupting): You are not willing to concede but you haven't anything further to offer?

Mr. Hogan: I am not willing to concede anything, if Your Honor please, on that.

The Court: Well, as I take it, we have the evidence before us that Mrs. Stoll was not delivered unharmed. That is, there is evidence that that was given to the grand jury. I offered you the opportunity to present any counter-evidence that you wished to present on that point, and I take it from your position now that you have no other coun-

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ter-evidence. You suggested Mr. Hudgins and he has testified, and there isn't anything else that you wish to present on that specific point, is there?

Mr. Hogan: The only possible way it could be presented, as I see, would be to interrogate the grand jurors themselves.

The Court: Well, unless you give me some basis for going behind the proceedings of the grand jury, I don't think I am warranted in doing it. We all know the fundamental rule that a grand jury's activities are not to be inquired into in the absence of some showing that they
 65 should be inquired into. You haven't given me any showing, as yet. You have given me what you hoped you might try to find out but you haven't given me any basis for doing it, have you?

What I mean is this, I am not trying to see all of the evidence that went before the grand jury but if there was any evidence that she was returned not unharmed, I believe the motion to quash the plea in abatement would be overruled. But what we have already is sufficient to sustain that position. Outside of the grand jurors themselves, that is all, then?

Mr. Hogan: Outside of the grand jurors themselves, that is all the defendant has.

The Court: Then let the plea in abatement be considered insufficient, and the motion by the government to strike it be sustained.

Mr. Hogan: Exception.

The Court: With exceptions to the defendant.

Mr. Brown: Then I suggest, Your Honor, that we put the arraignment date up one week and let the defendant appear for arraignment at that time.

Mr. Hogan: Before that is done I desire to file a motion to dismiss, and a motion to elect and a demurrer.

Now, the motion to elect is based upon the contention—
 66 the other day it was stated that the first count in this indictment had been nolle. I am unable to find any order in the record to that effect. Therefore, I must assume that the first count is still open.

Mr. Brown: I think the judgment affirmatively shows

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that the first count was dismissed.

The Court: Dismissed by the court or nolle?

Mr. Brown: Dismissed by the court.

Mr. Beckham: Dismissed by the court on motion of Judge Hamilton.

The Court: As to all of the defendants?

Mr. Brown: No. The jury found Mr. Thomas Henry Robinson Sr. and Mrs. Frances Robinson not guilty on the conspiracy count, and the first count charges a conspiracy and—Mr. Beckham, I think if you will examine the order—

Mr. Hogan (Interrupting): Of course, if it had been dismissal as to the other two defendants, it is still alive and open as to this defendant until some order is entered.

Mr. Brown: That is correct. The judgment would be about May 13, 1936. I know Judge Roche assumed it had been dismissed and made mention of the fact that Judge Hamilton had dismissed it.

The Court: That was a motion for a new trial, wasn't it?

67 Mr. Brown: No.

Mr. Beckham (Reading): "Came the United States by the United States Attorney and the defendant, and the Court informed the defendant of the charges contained in this indictment. It is ordered that count one of this indictment be and it is hereby nolle."

The Court: Doesn't that take care of the question, Mr. Hogan?

Mr. Hogan: Not just exactly. There is a little bit of difference between a nolle and an outright dismissal. The government could, it might be a useless thing, but it could come back at some future time and reinstate the first count or, rather, present it to another grand jury.

The Court: I don't know. So far as this case is concerned, it seems to me that that count is out of the picture.

Mr. Brown: It certainly appears so.

The Court: What might happen some time else I have no way of—

Mr. Hogan (Interrupting): Judge, we are just not taking any chances on the record. We are going to try to practice this case as it should be and I had not seen any—

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The Court (Interrupting): Well it is the Court's construction of that order—I can't do any more than
 68 construe that order, but that count is no longer in effect.

Mr. Hogan: If that is the Court's interpretation, then I assume that the Court will overrule this motion to elect?

The Court: Yes.

Mr. Hogan: Then I have the motion to dismiss and
 "the demurrer.

The Court: What is the basis of those?

Mr. Hogan: The chief basis of the demurrer is that the second count contains duplicitous matter. The second count charges in the conjunctive by the words "and" that the three defendants "did unlawfully transport and carry away"; whereas the language of the statute is "that they did transport or"—"or" in the disjunctive—"aid and abet, etc." There are some authorities on the point that, where there are two or more crimes contained in the same count, they are duplicitous. Now I do think that we assume that the defendant could have transported and carried away, as charged in the indictment, whereas he may or may not have aided and abetted the other two defendants or, as a corollary of that, they may or may not have aided him.

Mr. Brown: They didn't aid—they found them not guilty.

Mr. Hogan: It is not what the grand jury did
 69 or didn't do, it is the language of this indictment that we are concerned with. We think—the defendant thinks it is duplicitous for one count containing more than one charge.

Now the motion to dismiss is based upon violation of the Sixth Amendment of the Constitution, which guarantees to every defendant a speedy trial. They have had this defendant for about seven years, and that's not a speedy trial, and I don't think it could be contended that it is a speedy trial under the circumstances—

The Court (Interrupting): Well I think his point was that he got too speedy a trial. He got one in 48 hours, and now he complains about it.

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Mr. Hogan: No, his point was that he didn't get any trial, Judge.

The Court: Well the trial he got was within 48 hours and that, I gather from Judge Roche's opinion, was too speedy.

Mr. Hogan: Well, what he got was too speedy, but we won't concede that he got a trial.

The Court: You are not seriously pressing that point, are you?

Mr. Hogan: Yes, I am, Judge.

The Court: Well, let that motion and that demurrer be overruled, with exception to the defendant.

70 Mr. Brown: If we could set the arraignment date for, say, a week from today, at 9 o'clock?

The Court: You had better make it at 10 o'clock.

Mr. Hogan: What day is that?

The Court: That would be next Wednesday. It makes no difference. You can have it any day you want.

Mr. Hogan: That is all right.

Mr. Hogan: Now I desire at this time to make an oral motion that a reasonable bond be fixed for the defendant.

Now I may call the Court's attention to the fact that this defendant has no desire to run away. He has fought many, many years to try to get back into this court and have a trial of this case against him. There is no incentive, or would be no incentive, after having labored so long and so arduously, to get back into this court to try to skip out at this time.

Now his father and his wife were charged in the same indictment with the same offense as he was and, as I recall, their bonds were fixed at \$5000.00 each, and I submit that that in this case would be reasonable as to this defendant.

71 Mr. Brown: Of course I certainly want to appear as objecting to that. The original bonds of the father and the wife who admittedly had no part in the beating of Mrs. Stoll and the primary kidnapping of Mrs. Stoll, were originally set at \$25,000.00.

Mr. Hogan: I may correct your statement. It was originally set at \$50,000.

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Mr. Brown: \$50,000. And it was only reduced after the United States desired to avoid a trial until all three defendants could be brought together and be tried, and the judge said that he would order an immediate trial unless the United States Attorney, Judge Sparks, would agree to a reduction in the bond. Then it was agreed to because the United States Attorney desired, if possible, to have all three defendants tried together.

I certainly want to be heard in very strenuous opposition as to whether this defendant should be entitled to any bond at all. I have some cases that hold that in cases where capital punishment may be imposed that the defendant is not even entitled to bond.

I also want to call attention to the fact that he has been guilty of offenses before this offense—

Mr. Hogan (Interrupting): That is objected to.

Mr. Brown: On a motion for bond we can consider that.

The Court: Don't we have to consider the back-
72 ground of the whole matter?

Mr. Hogan: The fixing of the bond, of course, is within the Court's discretion.

The Court: Well I mean whether he has bond at all, in a capital case. Of course the amount is always fixed by the Court, but as to whether bond should be given at all in this case, don't we have to look at the whole background of the case?

Mr. Hogan: It is entirely within the discretion of the Court.

The Court: The time that this man will be in custody is not very long before he can be tried. We have had some consideration of the available dates that could be given for this trial, and I might state to counsel now that the way we have already assigned cases on our fall docket for trial, we have two still tentative dates for the trial of this case, depending upon whether the defendant wants a trial immediately, or would rather have a short delay in order to prepare.

So we could have a trial of this case on November 1st; that time still remains open on that calendar. Or, if the

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defendant wanted a trial before that, we could arrange to continue some other cases and give him an earlier date. Or, if he would like a later date than November 1st, we could give him November 29th.

73 Mr. Hogan: Well, if Your Honor please, we would certainly like the last date mentioned because there is a world of preparation that we must do in this case especially after the lapse of so many years.

The Court: Well, of course, the date will be fixed after the arraignment, but I am merely suggesting that to counsel so they can have it in mind when the time comes for fixing a date.

I believe, in view of the background of this case, and what has gone on, and everything connected with it, it is probably advisable that, if the Court has the discretion to do it, as I understand it has, to deny the motion for bond.

Now the only thing that remains is the arraignment?

Mr. Brown: The arraignment.

The Court: Next Wednesday morning at 10 o'clock, then we will take the arraignment.

Court convened in this matter, pursuant to adjournment, at 10 o'clock, October 13, 1943, and the following proceedings were had:

Appearances:

Eli H. Brown, III, for the United States.

Robert E. Hogan, for the defendant.

74 The Court: Robinson, last week I appointed some doctors to examine you for the purpose of informing the Court whether or not you were mentally competent at the present time when you would be formally arraigned and plead to this indictment, in view of the statements which were contained in Judge Roche's opinion of the California court. It seemed to be his view that the Court should make some investigation of that fact, to make a finding, as to whether or not you were mentally competent at the present time before any plea was taken, and I want to advise you and your attorney at this time that those

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doctors made the report to me that at the present time they found you mentally competent.

On this indictment, which was returned on the 20th of October, 1934, by the grand jury sitting for the Western District of Kentucky, you were charged in the second count with having unlawfully transported a kidnapped person in interstate commerce, having unlawfully transported Mrs. Alice Stoll from Louisville, Kentucky, to Indianapolis, Indiana, the kidnapped person being not a minor, and that she was not returned unharmed.

I think the indictment has been formerly read to you?

Mr. Robinson: Yes, sir.

Mr. Hogan: We formally waive the reading of
75 the indictment.

The Court: How does the defendant plead?

Mr. Robinson: Not guilty.

The Court: All right, let a plea of not guilty be entered.

I indicated to your counsel before, and possibly to you, that there were two possible dates that this case may be tried, on November 1st and November 29th; and it was suggested at that time that you preferred the date of November 29th.

Mr. Hogan: We prefer November 29th, Judge.

The Court: All right, let the case be set down for trial at 9 o'clock on November 29th. Will the government be ready at that time?

Mr. Brown: Yes, we will be ready.

The Court: And the defendant will be ready also?

Mr. Hogan: The defendant will try to be ready.

The Court: All right.

1*

TRANSCRIPT OF EVIDENCE

Louisville, Kentucky,
November 29, 1943.

Heard before:

Honorable Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, at Louisville,

and a jury.

Appearances:

Eli H. Brown, III, United States Attorney, and
J. D. Inman, Assistant United States Attorney, for the plaintiff.

Robert E. Hogan, Kentucky Home Life Building, Louisville, Kentucky, for the defendant.

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The Court: The case of the United States against Thomas Henry Robinson, Jr. Is the government ready?

Mr. Brown: Yes, Your Honor.

The Court: Is the defendant ready?

Mr. Hogan: The defendant is ready, Your Honor.

The Court: Now those of you who are subpoenaed here this morning as jurors, twelve of you will serve. The jury in this case will be selected in the usual way by drawing from the box and by the challenges of the respective parties. In addition to the twelve regular jurors, it appearing from what we know of this case that it will last a week or maybe more, there will be two alternate jurors also selected who will stay with the other members of the jury and listen to the evidence and to the trial. If it does happen that during the trial one of the regular jurors becomes ill so that he or she cannot go on with the trial, an alternate juror is drawn to take the place of that person. In that way there will be two alternates to take care of two pos-

*Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of evidence.

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sible casualties so that the jury will not have to be dismissed and the trial started over again on account of sickness. That means that 14 of you then will sit during this trial, 12 regular jurors and 2 alternate jurors.

The offense which is charged in this case involves, under some conditions, a possible penalty of death, 3 and by reason of that fact the Court will enter an order that the jury will be kept in custody during the trial of this case. Arrangements have been made to take care of the jurors in a comfortable manner at the Brown Hotel. Rooms have been provided where they will spend their evenings and also take their meals there together. That means that for some of you, maybe for all of you who serve on the jury, there will be some inconvenience. The Court realizes that but I want to impress upon you that when you are examined by the attorneys to be selected on this jury that that is no excuse itself for not being willing to serve. Jury duty is a civic duty that every citizen has. As I have pointed out time and again to the many people who come to this court, of foreign birth, and who ask to be naturalized, to be made American citizens, to acquire the rights of citizenship they are not only acquiring the rights and privileges but they are also acquiring the duties of American citizens likewise, and one of your duties as an American citizen is to serve on juries when and if called if it is at all possible to do so. Too many of us I think are willing to accept the privileges of citizenship without at times responding to the call of duty because we feel it is going to inconvenience us to some extent or that we want to do something else which is more pleasant.

Accordingly, I don't want any of you to try to be 4 excused by reason of the fact that you are not going to enjoy being in custody, although it will not be strict custody, but being separated from your neighbors and your friends for the time that this case will be going on. Of course, if there is some special reason why you could not possibly so serve, the Court will consider it and of course be glad to grant your request if it so appears necessary, such as serious illness in the family or some condition at home that makes it impossible for you to leave your home

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for the few days that it will be necessary.

Of course, we all know at this time that a great many of the boys and women are performing their duties of citizenship which in a way is far more arduous than what you are being called upon to do at this time.

I want you to know that every defendant that comes to trial is entitled to the service of qualified jurors just as if someone of your family or some friend of yours was on trial and you would want them to qualify in the case and not be excused for trivial reasons. You owe that like thought to the defendant who is on trial in this case. Accordingly, keep that in mind as the names are called.

Due to the fact that the number of challenges that are provided by law in a case of this kind are fairly numerous, it may take us most of the day, or all day, to complete 5 the selection and impaneling of this jury. But after the jury is impaneled and the 14 are selected, the rest of you may be excused.

It is possible that, even though you may be called and put into the jury box, temporarily, that either side may excuse you for reasons of their own. Therefore, it will be an academic question with you and you will not be required to serve in any event. Therefore, very few of you will be called upon to serve in this case.

A question of practical importance has been brought to my attention which naturally comes to the minds of conservative men and women, and that is whether or not the jurors would be required to pay their hotel bills at the Brown Hotel while they are there. I am glad to advise you that the government will take care of that and the government will pay the jurors' expenses while they are here.

Mr. Marshal, will you call the first 12 jurors?

Mr. Marshal: All right.

The Court: As soon as we get 12 people in the box there will be enough seats for everybody who is standing out there.

The Marshal: Come around as I call your name.

The Court: I will ask you to please answer as soon as your name is called, and also step up and take the box.

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6 The Marshal: Mrs. Mildred Anderson
 Mrs. Gertrude C. Griggs
 Thomas N. Allen
 Joseph C. Powers
 Winthrop Allen
 J. Lawrence Abell
 Hugh Beavin
 Joseph J. Edelen
 Asa Basham
 Evarts Speed, Jr.
 Mrs. Ida Greathouse
 Mrs. James Ballard
 Mrs. Evelyn T. Wilson

No, Mrs. Wilson will not take the box as I already have 12.

The Court: Now, for those of you who are seated in the jury box, and also to the other members of the jury panel, I will make this brief statement of the case so that you will understand what the trial generally is about.

This indictment which was returned against the defendant, Thomas Henry Robinson, Jr. on the 20th day of October, 1934, charges in the second count, which is the only count for your consideration, that on or about the 10th day of October, 1934, in Jefferson County, Kentucky,

the defendant, Thomas Henry Robinson, Jr., did unlaw-
 7 fully transport or cause to be transported from Louisville, Kentucky, to Indianapolis, Indiana, Mrs. Alice Stoll who was not a minor and who was not transported by her parents, who had been unlawfully seized, kidnapped and abducted and carried away from her home by the defendant and held Mrs. Stoll for ransom or reward; and that the defendant, while Mrs. Stoll was in their custody, did beat, injure, and harm her and did not liberate her unharmed.

The defendant there is seated at the table in the middle between the three parties who are at that table.

Anyone of you related by blood or marriage to the defendant?

I understand that probably some of you, maybe all of you, have heard something about this case because it

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has been in the newspapers quite a bit and you have that knowledge, but outside of the general knowledge that you may have gathered from the newspapers, do anyone of you know anything about this case—that is, have you had any connection with the case in any way or have you talked to the parties who have been in the case in any way?

Is there any reason why any one of you cannot sit as a juror in this case and render a fair and impartial verdict from the evidence as it will be presented to you at this trial?

Mr. Brown, will you ask the questions for the government?

8 Mr. Brown: Mrs. Anderson, under the law given to you by the Court, and if the facts justify it, would you be willing to return a verdict which would cause the death penalty to be imposed upon this defendant?

Mrs. Anderson: Yes.

Mr. Brown: Mrs. Griggs, under the law as given to you by the Court and if the facts as testified to from the witness stand, would you be willing to vote for a death penalty for this defendant?

Mrs. Griggs: Yes.

Mr. Brown: Mr. Adams, under the law given to you by the Court, and if the facts justify it, would you be willing to vote for a death penalty against this defendant?

Mr. Adams: No, sir.

The Court: What is your answer?

Mr. Adams: No, sir.

The Court: Are you conscientiously opposed to a penalty which would be death if the law and the facts justified it?

Mr. Adams: That's right.

The Court: You may be excused.

The Marshal: Is that Mr. Thomas N. Adams?

Mr. Adams: Yes.

The Marshal: Vacate the box.

9 (Mr. Adams leaves the box.)

The Marshal: Mrs. Katherine Tate.

Mr. Brown: No, I think the next juror was Mrs. Wilson.

The Marshal: Yes, Mrs. Evelyn Wilson.

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The Court: I suggest that you do not move over. Just leave the space vacant where it is so as to keep the order.

Mr. Brown: Mrs. Wilson, under the law given to you by the Court, and if the facts as disclosed in the proof justify it, would you be willing to vote for a death penalty against this defendant?

Mrs. Wilson: Yes.

The Court: I might say to the jury panel, the entire panel, that in the Federal Court, which is different from the practice in the State Court, ordinarily the jury has nothing to do with the verdict except to return a verdict of guilty or not guilty. The Federal Court, after a verdict is rendered generally the Court would be the only person concerned in fixing the penalty. In this particular case where the charge is transportation in interstate commerce of the kidnapped person held for reward, that particular statute does provide that the death penalty may be imposed if the jury so recommends. I want it distinctly understood by everyone that the jury would

10 not fix the penalty in any event. It would be a case merely of recommendation by the jury which the Court could or could not follow, as deemed best and advisable.

Mr. Brown: Mr. Powers, under the law as given to you by the Court, and if the facts justify it, would you be willing to recommend the imposition of the death penalty?

Mr. Powers: Yes.

Mr. Brown: Mr. Allen, under the law as given to you by the Court, and if the facts justify it, would you be willing to recommend the imposition of the death penalty against this defendant?

Mr. Powers: Yes.

Mr. Brown: Mr. Abell, under the law given to you by the Court, and if the facts justify it, would you be willing to recommend the imposition of the death penalty against this defendant?

Mr. Abell: Yes.

Mr. Brown: Mr. Beavin, under the law given to you by the Court, and if the facts justify it, would you be

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willing to recommend the imposition of the death penalty against this defendant?

Mr. Beavin: Yes.

Mr. Brown: Mr. Edelen, under the law as given to you by the Court, and if the facts justify it, would you be willing to vote recommending the death penalty?

11 Mr. Edelen: Yes.

Mr. Brown: Mr. Basham, under the law given to you by the Court, and if the facts as testified to justify it, would you be willing to vote for the death penalty?

Mr. Basham: No, I would not.

The Court: What is your name?

Mr. Basham: Basham.

The Court: Mr. Basham, do you mean that you have conscientious scruples to prevent you from voting for the death penalty even if the facts and the law justify it?

Mr. Basham: Yes.

The Court: You may be excused.

The Marshal: Mr. Basham will vacate the box. Mrs. Katherine Tate will take the box.

Mr. Brown: Mrs. Tate, under the law given to you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against this defendant?

Mrs. Tate: Yes.

Mr. Brown: Mrs. Greathouse, under the law as given to you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against the defendant?

Mrs. Greathouse: Yes.

Mr. Brown: Mr. Ballard, under the law given to
12 you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against the defendant?

Mr. Ballard: Yes.

Mr. Brown: Mr. Speed, under the law given to you by the Court, and if the facts as testified to justify it, would you be willing to vote recommending the death penalty against the defendant?

Mr. Speed: Yes.

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Mr. Brown: I pass the jury to you.

- 13 Mr. Hogan: If Your Honor please, I will change my location so that I will be able to face the Jury.

Mr. Brown: You may have this chair, Bob.

Mr. Hogan: I have my material here, so I will sit over here.

Mr. Hogan: Mrs. Anderson, where do you live?

Mrs. Anderson: 205 N. Longworth.

Mr. Hogan: Are you a housekeeper?

Mrs. Anderson: Yes.

Mr. Hogan: What is the business of your husband?

Mrs. Anderson: Lumber.

Mr. Hogan: I didn't understand.

Mrs. Anderson: Millwork.

Mr. Hogan: Does he run his own business or is he employed?

Mrs. Anderson: He and his brother.

Mr. Hogan: And who is his brother?

Mrs. Anderson: Frank Anderson.

Mr. Hogan: You are Mrs. Sid Anderson, I believe.

Mrs. Anderson: Yes, sir.

Mr. Hogan: Sid Anderson and his brother, Frank Anderson, operate or did operate the Anderson Manufacturing Company on Beech Street in Parkland?

Mrs. Anderson: Yes, sir.

Mr. Hogan: Are you related by the ties of blood or marriage to Mrs. Alice Speed Stoll?

Mrs. Anderson: No, sir.

- 14 Mr. Hogan: Or to her father, Mr. William S. Speed?

Mrs. Anderson: No, sir.

Mr. Hogan: Or to her mother, Mrs. Virginia Speed?

Mrs. Anderson: No, sir.

Mr. Hogan: Or to her grandfather, J. B. Speed?

Mrs. Anderson: No, sir.

Mr. Hogan: Or to her step-grandmother, the philanthropist, Mrs. Hattie Bishop Speed, who is, of course, deceased?

Mrs. Anderson: No, sir.

Mr. Hogan: Or are you related by the ties of blood or

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marriage to any member of the Speed, Stoll or Frederick M. Sackett families?

Mrs. Anderson: No, sir.

The Court: Mr. Hogan, I expect maybe we can ask those questions generally to the whole panel sitting in the box because if such facts should develop I think they probably should be excused, instead of taking time to ask each individual.

Mr. Hogan: I will ask those similar questions to each member and all members collectively in the box, whether or not you or any of you are related by the ties of blood or marriage to Mrs. Alice Speed Stoll, to her father, Mr. William S. Speed, to her mother, Mrs. Virginia Speed, her grandfather, J. B. Speed, or her step-grandmother, Mrs.

Hattie Bishop Speed, deceased.

15 Mr. Speed: I am related.

Mr. Hogan: You are Mr. Evarts Speed, Jr., I believe.

Mr. Speed: That's right.

Mr. Hogan: What is that relationship?

Mr. Speed: Mrs. Speed is a cousin of mine.

Mr. Hogan: Mrs. Virginia Speed is a cousin of yours?

Mr. Speed: No. Mrs. Alice Speed Stoll is a cousin of mine, and consequently her father.

Mr. Hogan: Your father and her father are brothers?

Mr. Speed: No.

Mr. Hogan: What is the relationship there?

Mr. Speed: Mrs. Stoll's grandfather and my grandfather were first cousins.

The Court: I believe the relationship is such that it disqualifies the juror. You may step aside.

The Marshal: Henry Ackerman, Jr.

The Court: Mr. Ackerman, you heard me state to the jurors the general nature of this case, the charge that has been made by this indictment,—are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Ackerman: No.

The Court: Do you know anything about the facts of this case other than what any ordinary citizen may know by reading in the newspaper?

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Mr. Ackerman: I have worked at the Speed residence up on Lexington Road.

16 The Court: You mean before, or afterwards or at the time?

Mr. Ackerman: Before and afterwards.

The Court: Were you working there at the time?

Mr. Ackerman: No, sir.

The Court: Have you heard it discussed by reason of that fact?

Mr. Ackerman: I have; yes, sir.

The Court: Would the discussion which you have heard give you any definite or fixed opinion in the matter?

Mr. Ackerman: To a certain extent, I believe it would.

The Court: All right, Mr. Ackerman, you may step aside.

The Marshal: Mrs. Elizabeth F. Davidson.

The Court: Mrs. Davidson, you heard me explain the case to the other members of the panel. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Davidson: No.

The Court: Do you know anything about the facts of the case other than what everybody generally knows?

Mrs. Davidson: No.

The Court: Is there any reason why you cannot sit and act as a juror in this case and render a fair and impartial verdict in the case according to the law and evi-
17 dence as it will be presented to you?

Mrs. Davidson: No.

The Court: Mr. Brown, do you care to ask her any questions?

Mr. Brown: Yes. Mrs. Davidson, under the law given to you by the Court and if the facts testified to justify it, will you be willing to vote rendering the imposition of the death penalty?

Mrs. Davidson: Yes.

Mr. Brown: I pass her to you.

Mr. Hogan: Addressing my remarks specifically to Mrs. Davidson now—where do you live, Mrs. Davidson?

Mrs. Davidson: 258 Meadow Road.

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Mr. Hogan: In what section of the city is that?

Mrs. Davidson: It is out near Bowman Field.

Mr. Hogan: What is your business or profession.

Mrs. Davidson: I am a widow. I have none.

Mr. Hogan: Are you a housekeeper?

Mrs. Davidson: Yes.

Mr. Hogan: You hesitated a moment. Do you mean by that that you keep your own house?

Mrs. Davidson: No. I live with my parents.

Mr. Hogan: How long have you lived at that address?

Mrs. Davidson: Since 1928.

Mr. Hogan: Fifteen years, isn't it?

18 Mrs. Davidson: Yes.

Mr. Hogan: What was the business or profession of your husband?

Mrs. Davidson: He was a salesman, drug salesman.

Mr. Hogan: And by whom was he employed, or for whom did he sell?

Mrs. Davidson: Two—Sharp & Dunn and Meade-Johnson.

Mr. Hogan: Are you related by the ties of blood or marriage to Mrs. Alice Speed Stoll?

Mrs. Davidson: No.

Mr. Hogan: Mr. William S. Speed?

Mrs. Davidson: No.

Mr. Hogan: Mrs. Virginia Speed?

Mrs. Davidson: No.

Mr. Hogan: J. B. Speed?

Mrs. Davidson: No.

Mr. Hogan: Mrs. Hattie Bishop Speed, deceased?

Mrs. Davidson: No.

Mr. Hogan: Are you related by the ties of blood or marriage to Mr. Berry V. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Or to Mr. Charles C. Stoll, deceased?

Mrs. Davidson: No.

Mr. Hogan: Or to Charles E. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Charles W. Stoll?

19 Mrs. Davidson: No.

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Mr. Hogan: William A. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Or to any member of the Stoll family?

Mrs. Davidson: No.

Mr. Hogan: Or to any member of the Stoll, Speed or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Are you related by the ties of blood or marriage to the wives of Berry Stoll, Charles C. Stoll, Charles E. Stoll, Charles W. Stoll or William A. Stoll?

Mrs. Davidson: No.

Mr. Hogan: Are you acquainted with any of those people that I have enumerated?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, or has any member of your family or household been employed by the Byrne-Speed Coal Company?

Mrs. Davidson: No.

Mr. Hogan: The Louisville Cement Company?

Mrs. Davidson: No.

Mr. Hogan: The Speed Portland Cement Company?

Mrs. Davidson: No.

Mr. Hogan: The Black Star Coal Company?

Mrs. Davidson: No.

Mr. Hogan: The Pioneer Coal Company?

20 Mrs. Davidson: No.

Mr. Hogan: Or to any business operated by the Speed family or the Sackett family?

Mrs. Davidson: No.

Mr. Hogan: Are you an employee or have you ever been, or has any member of your household ever been, employed by the Stoll Oil Refining Company?

Mrs. Davidson: No.

Mr. Hogan: Or any business operated by the Stoll family?

Mrs. Davidson: No.

Mr. Hogan: Are you related by the ties of blood or marriage to Mrs. Olive Speed Sackett, the widow of Frederick M. Sackett, deceased?

Mrs. Davidson: No.

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Mr. Hogan: I might say as a matter of information, that Mr. Frederick M. Sackett was formerly United States Senator and later Ambassador to Germany. Are you employed, or have you been, or have any members of your family or household ever been, employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, her father, William S. Speed, her mother, Mrs. Virginia Speed, her step-grandmother, Hattie Bishop Speed, deceased, her grandfather, J. B. Speed, deceased, or any member of the Stoll or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Have you ever attended any social functions or musical recitals given by or at the home of Mrs. Hattie Bishop Speed, or at any other place by her or in which she had some interest or control?

Mrs. Davidson: No.

Mr. Hogan: Has any member of your family or household ever been employed in any of the filling stations operated by the Stoll Oil Company or in which they had any interest?

Mrs. Davidson: No.

Mr. Hogan: Are you or any member of your family or household a stockholder or bondholder in the Stoll Oil Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interest, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

Mrs. Davidson: Not that I know of.

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22 Mr. Hogan: Does there exist in your mind, Mrs. Davidson, such a state of mind in regard to this case or to this defendant, Thomas H. Robinson, Jr., that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

Mrs. Davidson: No.

Mr. Hogan: Have you read at any time in the newspapers or magazines, or any other place, an account of the commission of the crime with which this defendant is charged?

Mrs. Davidson: No, I don't believe so. I have read the newspapers.

Mr. Hogan: You have read in the newspapers the account of the crime with which this defendant is charged?

Mrs. Davidson: Not so much at the time.

Mr. Hogan: Well, at any time?

Mrs. Davidson: Well, yes, I have read the newspapers.

Mr. Hogan: Now, if you have, as you say, read those accounts, do you believe that notwithstanding that you have read those articles, that you can render an impartial verdict according to the law and the evidence?

Mrs. Davidson: Yes.

Mr. Hogan: I will ask you if you read the article in the Roto-Magazine Section of the Courier-Journal of November 21st.

23 Mrs. Davidson: No.

Mr. Hogan: 1943, this year?

Mrs. Davidson: No.

Mr. Hogan: That article about this case, or the circumstances or facts of it?

Mrs. Davidson: No, I have not.

Mr. Hogan: Have you formed any opinion or impression based upon rumor, or have you expressed an opinion? Have you ever expressed an opinion?

Mrs. Davidson: No.

Mr. Hogan: Have you ever formed any opinion based upon rumors that you might have heard about this case?

Mrs. Davidson: No, I don't believe I have.

Mr. Hogan: You hesitated a moment. Have you or have you not, Mrs. Davidson?

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Mrs. Davidson: No, I don't believe I have. I did read the account, but I have an open mind.

Mr. Hogan: If you had formed an opinion on a rumor you would know that fact, would you not?

Mrs. Davidson: Yes.

Mr. Hogan: Have you formed any opinion whatsoever based upon rumor?

Mrs. Davidson: No, I don't believe I have.

Mr. Hogan: You say you don't believe you have. Will you come out positively and say you have or have not?

24 Mrs. Davidson: I have not.

Mr. Hogan: Are you guardian or ward?

Mrs. Davidson: Am I?

Mr. Hogan: Yes, or master or servant, landlord or tenant, employer or employee on wages of a member of the family of Mrs. Alice Speed Stoll or the Stoll, Speed or Sackett families?

Mrs. Davidson: No.

Mr. Hogan: Have you ever at any time complained against this defendant in any criminal prosecution or proceeding?

Mrs. Davidson: No.

Mr. Hogan: Did you serve on the Grand Jury which returned the indictment in this case in October, 1943?

Mrs. Davidson: No.

Mr. Hogan: Were you a member of former juries sworn to try Thomas H. Robinson, Sr., the father of this boy, and Frances Robinson, his then wife, who were jointly indicted with this defendant in October, 1934?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, or are any members of your family or household, stock or bond holders, office holders or directors of any of the United States Government corporations, associations or agencies, such as the Federal Land Bank, the Federal
25 Reserve Bank, the Reconstruction Finance Corporation, the AAA, generally known as the Farm Association, the Commodity Credit Corporation, or any other of the United States alphabetical divisions or set-ups?

Mrs. Davidson: No.

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Mr. Hogan: Or are you, or any member of your household, now, or have you at any time ever been, directly or indirectly employed by the United States?

Mrs. Davidson: No.

Mr. Hogan: Do you now or have you ever received a pension, salary, bonus, soldier or sailor's allotment benefit or remuneration in any form from the United States?

Mrs. Davidson: No.

Mr. Hogan: Do you receive, or have you received or participated in receiving, a railroad retirement pension allotment or payment?

Mrs. Davidson: No.

Mr. Hogan: Do you now or have you ever received, directly or indirectly, from the United States, any subsidy allowance, bonus or crop cut-out payments?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, a member of any board, commission or agency of the United States, such as the Civil Service Commission, the

War Manpower Commission, the Transportation Com-
26 mission, Rationing Board, Labor Board, OPA, generally referred to as OPA but specifically as Office of Price Administration, or Selective Service and Training Boards, usually designated as Draft Boards, or any other board or commission?

Mrs. Davidson: No.

Mr. Hogan: Are you now, or have you ever been, an office holder or appointee of the United States Government or any of its agencies or boards?

Mrs. Davidson: No.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime who interposes as a defense a plea of insanity?

Mrs. Davidson: No.

Mr. Hogan: By that I mean, are you a person who believes that because a person is charged with a crime and interposes a plea of insanity that that plea may or may not be a sham plea or an excuse for crime?

Mrs. Davidson: No.

Mr. Hogan: Are you sure about your feeling in re-

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gard to that question?

Mrs. Davidson: Yes, I am.

Mr. Hogan: Do you, or will you have any prejudice against one interposing a plea of insanity as a defense who thereafter is shown to have made a recovery and is restored to sanity?

27 Mrs. Davidson: No.

Mr. Hogan: Have you formulated any opinion whatsoever as to the guilt or innocence of this defendant?

Mrs. Davidson: No.

Mr. Hogan: Is any person related to you by the ties of blood or marriage now serving in a branch of the military service of the United States?

Mrs. Davidson: Yes.

Mr. Hogan: Who is that person?

Mrs. Davidson: A brother.

Mr. Hogan: Is he in the foreign service?

Mrs. Davidson: Yes.

Mr. Hogan: And what is the name of your brother, please?

Mrs. Davidson: Lieutenant Edwin F. Franz.

Mr. Hogan: F-r-a-n-z?

Mrs. Davidson: That's right.

Mr. Hogan: What was your brother's business before his entry into military service?

Mrs. Davidson: He was with the sanitation end, Mr. Dugan, at the Board of Health.

Mr. Hogan: Mrs. Davidson, if you, after hearing the evidence of this case and the law as given to you by His Honor, Judge Miller, should entertain any reasonable doubt either as to the capacity, I mean the legal capacity, of this defendant to commit any of the acts charged in

28 this indictment, or any reasonable doubt as to his guilt, would you resolve that doubt in favor of the defendant, Thomas Henry Robinson, Jr. and acquit him?

The Court: I think a question of that sort requires some explanation from the Court, which would ordinarily come at the end of the case, but can be said now and repeated then, that under the law in criminal cases, if there remains a reasonable doubt in the mind of any juror as to

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the guilt of the defendant, such juror should find a verdict of not guilty. I will so instruct you. I believe, Mr. Hogan, the effect of Mr. Hogan's question is that if the Court gives you such an instruction, would you find a verdict of guilty, and I will tell you that is your duty to so do when the Court so instructs you. That's the effect of your question, isn't it, Mr. Hogan?

Mr. Hogan: Yes, sir. You say as a positive statement of fact that, after you have heard all the evidence and the law as given to you by Judge Miller, if you should entertain any reasonable doubt as to his guilt or as to his legal capacity to commit any of the acts charged in the indictment, you would resolve that doubt in favor of this defendant and render a verdict or vote for an acquittal?

Mrs. Davidson: Yes, if the Judge so instructs.

The Court: I think your question should include,
29 Mr. Hogan, the fact that the Court so instructs as a matter of law.

Mr. Hogan: The Court will so instruct, Mrs. Davidson. Now, assuming that the Court does give you such an instruction, if you should have any reasonable doubt as to the guilt of this defendant or as to his legal capacity to commit any of the acts charged in this indictment, would you vote for an acquittal?

Mrs. Davidson: Yes.

Mr. Hogan: Now, do you believe that simply because this defendant has been indicted that that is some or any evidence of his guilt?

The Court: I believe that question likewise requires some knowledge on the part of the juror of what the law is in this case. As in every criminal case, the Court will so instruct the Jury, now and later, too, that the return of an indictment by the Grand Jury is no evidence in any way of the defendant's guilt and will not be considered by any member of the Jury as any evidence of his guilt. It is merely the charge by the Government that this defendant has committed the crime alleged in that indictment. You will hear the case and determine the case solely upon the evidence you hear from the witness-stand, giving no consideration to the fact that an indictment has been re-

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turned by a Grand Jury heretofore.

30 Mr. Hogan: Mrs. Davidson, would the fact that this defendant has been indicted create in your mind a prejudice or bias, or even a suspicion, that he may be guilty?

Mrs. Davidson: No.

Mr. Hogan: Do you believe that you can sit upon this Jury and after hearing the law and all the evidence, that you could render a fair and impartial verdict?

Mrs. Davidson: Yes.

Mr. Hogan: Uninfluenced by any pressure or motive or opinion whatsoever?

Mrs. Davidson: Yes.

Mr. Hogan: Your Honor, please, I will have to go back over these other jurors with these same questions.

The Court: Let me speak to counsel a minute.

The following was out of the presence of the Jury:

The Court: There are certain questions which you have asked which undoubtedly will be asked all the jurors, such as whether they have any people employed by the Reconstruction Finance Corporation, or by these different corporations in the coal business, and about relationship to the Speeds and Stolls, and I expect all of those questions could be asked to the group as a whole, the ones you have got now, then after the strikes are in you can lump them and ask them. Of course, questions as to what any-

31 one has read about the case and any opinion they have had you can reserve those for individual asking, but those general questions I think should be referred to the Jury as a whole. You can go over them once more or you can ask them if they have heard them.

Mr. Hogan: I believe I will frame this question and ask them generally as a whole.

The Court: It has come to my attention that neither side requested that the Jurors be sworn on the voir dire. That can be done.

Mr. Hogan: I think that can be done by reiteration.

The Court: After we swear them all you can ask Mrs. Davidson if her answers to the questions you asked will be the same.

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Before the Jury:

The Court: Now, members of the Jury panel, I have just discussed with counsel the procedure of not having to ask each individual member of the Jury certain routine questions which counsel has indicated he would like to have an answer to. I think a lot of those questions can be addressed to the jurors as a group with reference to the connection, either business, social or otherwise, they might have with any members of the Speed or Stoll families or any enterprises that they may be engaged in. Accordingly, Mr. Hogan will address you as a group with respect to those questions and all of you can give them your attention and make answers to them. Thereafter he can take each individual juror and address specific questions to that jury as he may think advisable. I believe, following this procedure, I will ask that the Jury stand and take the oath that you will truthfully and fully answer the questions which will be asked you by Mr. Hogan.

The Jury was then duly sworn by the Clerk.

Mr. Hogan: Mrs. Davidson, you heard the questions that I have just put to you before you were sworn. Now that you are sworn, if those same questions were asked you, would you make the same answers now that you did previously?

Mrs. Davidson: Yes.

Mr. Hogan: Mrs. Anderson, would you, and do you now, make the same answers since you have been sworn as a prospective juror as you did previously or before you were sworn?

Mrs. Anderson: Yes, sir.

Mr. Hogan: You reiterate those same answers to the questions that I had asked you, assuming that if I would now ask you the same questions your answers would be the same as before.

Mrs. Anderson: Yes, sir.

Mr. Hogan: For the present, as indicated by His Honor, I am going to ask all of you collectively these general questions. I might say that in law, as His Honor will probably tell you, if you remain silent and do not answer, your answer indicates that it is a negative an-

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swer. In other words, your answer, if you did answer to it, would be "No." Therefore, with that in view and with that in mind, if you do have any answers, will you please speak out affirmatively so that we might know what your answers to those particular questions might be, as we have no way of knowing when you remain silent just what your answer is unless you speak out. We, as I say, assume in law that if you remain silent your answer is "No."

Are you related by the ties of blood or marriage to Mrs. Alice Speed Stoll, her father, William S. Speed, her mother, Mrs. Virginia Speed, her grandfather, J. B. Speed, or to her step-grandmother, Mrs. Hattie Bishop Speed, deceased?

I take it by your silence, then, that your answer to that question is no.

Are you related by the ties of blood or marriage to any member of the Speed, Stoll or Sackett families?

I take it by your silence likewise that your answer is no.

Are you acquainted with any member of the Speed, Sackett or Stoll families?

Mrs. Ballard: Yes.

34 Mr. Hogan: Mrs. Ballard, what is the nature—

The Court: Probably, wouldn't it be well to just take the names of these jurors and go on with the general questions, then come back to this?

Mr. Hogan: Well, I might lose track of just who they might be.

The Court: All right.

Mr. Hogan: Mrs. Ballard, what is the nature and extent of that acquaintanceship?

Mrs. Ballard: Over a period of years. I don't know Mrs. Stoll well, but I have known her for a long time. I know the Speeds and Mrs. Sackett.

Mr. Hogan: Over a period of some ten, fifteen or twenty years?

Mrs. Ballard: Yes.

Mr. Hogan: Have you had social contacts, civic contacts, charitable contacts, with them?

Mrs. Ballard: Yes.

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Mr. Hogan: Know them rather generally and over a period of a long time?

Mrs. Ballard: That's right.

Mr. Hogan: Would the fact that you have had those contacts and that acquaintanceship with the members of those families sway your verdict or—

Mrs. Ballard: I don't think so. I think I can give a fair verdict.

35 Mr. Hogan: Do you think and believe that you can sit upon this jury and after hearing the evidence and the law given to you by His Honor, that you could fairly and impartially and without prejudice render a fair and impartial verdict?

Mrs. Ballard: I think so; yes.

Mr. Hogan: Now, the gentleman on the back row.

Mr. Allen: My answer to those questions would be just the same as Mrs. Ballard's.

The Court: The name is Winthrop Allen.

Mr. Hogan: Mr. Allen, you have known those families and the members of those families I have mentioned over a period of years, have you not?

Mr. Allen: Yes.

Mr. Hogan: You have had social, business, civic and charitable contacts with the members of those families?

Mr. Allen: Yes.

Mr. Hogan: With that in mind, could you sit upon this Jury and render a fair and impartial verdict after hearing the evidence and the law?

Mr. Allen: I could.

Mr. Hogan: Now, we will get back to these general questions.

The Court: There was a third one on the jury.

Mr. Hogan: Mrs. Anderson.

36 Mrs. Anderson: Mrs. George Stoll taught me in Sunday School about twenty-three years ago.

Mr. Hogan: Would that fact influence your verdict in this case? Would it embarrass you to sit upon a jury in which members of their family will be called as prosecuting witnesses?

Mrs. Anderson: No.

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Mr. Hogan: Do you believe that you could fairly and impartially render a fair verdict after hearing the evidence and the law?

Mrs. Anderson: Yes.

Mr. Hogan: My next general question then to all of you collectively—are you related by the ties of blood or marriage to Berry V. Stoll, Charles C. Stoll, deceased, Charles E. Stoll, Charles W. Stoll, William A. Stoll, or any member of the Stoll family?

I take it by your silence that your answer to that question is no.

Are you acquainted with any member of the Stoll families. Of course, Mrs. Ballard, you know Mrs. Alice Stoll and you know Mr. Stoll?

Mrs. Ballard: Yes.

Mr. Hogan: Mr. Berry Stoll?

Mrs. Ballard: Yes.

Mr. Hogan: Are you acquainted with any of the
37 other members of the Stoll family?

Mrs. Ballard: No.

The Court: I notice you are naming some of the Stoll boys. There is a George Stoll, I believe.

Mr. Hogan: I will include in that list of Stolls, Mr. George Stoll. Do you know him, members of the panel collectively, or are you related by the ties of blood or marriage to Mr. George Stoll?

Is he a cousin of Mr. Charles C. Stoll?

The Court: He is one of the four brothers, as I understand it, isn't he?

Mr. Brown: Yes, that is correct.

Mr. Hogan: Mr. Allen and Mrs. Ballard, you have already answered that you are acquainted with the member of the Stoll family, and is the nature and extent of that acquaintanceship about the same as it is with the members of the Speed and Sackett families?

Mr. Allen: Yes.

Mrs. Ballard: I am only acquainted with Berry Stoll. I don't know any of the others.

Mr. Hogan: Just what is the nature and extent of your acquaintanceship with Mr. Berry Stoll, Mrs. Ballard?

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Mrs. Ballard: Just a speaking acquaintance.

Mr. Hogan: Have you ever been in Mrs. Alice Stoll's home?

38 Mrs. Ballard: No.

Mr. Hogan: Has she ever been in yours?

Mrs. Ballard: No.

Mr. Hogan: Have you ever been at the Hattie Bishop Speed home at Garvin Place and Ormsby?

Mrs. Ballard: Yes.

Mr. Hogan: At which time Mrs. Stoll was there?

Mrs. Ballard: Well, I can't remember that. It has been a good many years ago. She might or might not have been there. I have been to French lectures and musicals there. Very probably she was there.

Mr. Hogan: Addressing myself to you and Mr. Allen again, the fact that you are acquainted with Mr. Berry Stoll, possibly Mr. Allen acquainted with other members of the Stoll family, would that influence your verdict in this case?

Mrs. Ballard: No.

Mr. Allen: It would not.

Mr. Hogan: Would it embarrass or humiliate you to sit upon this jury, considering that acquaintanceship with those members of those two families, if you found it within your belief after hearing the evidence and the law that a verdict of not guilty should be returned by you?

Mr. Allen: It would not.

Mrs. Ballard: No.

Mr. Hogan: I will address my remarks now to the
39 members collectively. Are you an employee, or have you ever been, or has any member of your family or household been, employed by the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, or any business operated by the Speed or the Sackett family?

I take it by your silence that your answer is no.

Are you an employee, or have you ever been, or has any member of your family or household been, employed by the Stoll Oil Refining Company or any business operated

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by any member of the Stoll family?

Mr. Beavins: I had a brother that was working six or eight years ago, if I am not mistaken, I may be mistaken on that—he was working for the Stoll Oil Company.

Mr. Hogan: What is your name?

Mr. Beavins: Beavins—Hugh Beavins.

Mr. Hogan: You are from Lebanon, Mr. Beavins?

Mr. Beavins: Yes.

Mr. Hogan: Did he work at the main office of the Stoll's or did he work—

Mr. Beavins: Wel, he had a clerical job of some kind. I don't know what it was.

Mr. Hogan: Where is he now employed?

Mr. Beavins: He is employed by the Huber & Huber Transfer Company.

40 Mr. Hogan: Would the fact that your brother was formerly an employee of the Stoll Company influence your verdict in this case?

Mr. Beavins: No, sir.

Mr. Hogan: Now to all the members again—are you related by the ties of blood or marriage to Frederick M. Sackett, deceased, or to his widow, Mrs. Olive Speed Sackett?

I take it that your answer is no.

Are you employed, or have you been, or have any members of your family or household ever been, employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Refining Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interest, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

I take it that to those questions or that question, your answer is no.

Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, Mr. William S. Speed, Mrs. Virginia Speed, Mrs. Hattie Bishop Speed, deceased, or with her grandfather, J. B. Speed, or any members of the Stoll or

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Sackett or Speed families?

- 41 Mrs. Ballard: That same question, the social contact.

Mr. Hogan: Yes, we have gone over that. We know your acquaintanceship, as to you, Mrs. Ballard, and as to you, Mr. Allen. As to the rest of the members in the box, your answer, I take it, is no.

Have you ever attended social functions or musical recitals or lectures given by or at the home of Mrs. Hattie Bishop Speed or any member of the Speed, Stoll or Sackett families?

Mrs. Ballard: Yes.

Mr. Hogan: Your answers, Mr. Allen and Mrs. Ballard, have already been listed. Have you or any member of your family or household ever been employed at any of the filling stations operated by the Stoll Oil Company or in which they had or now have any interest?

I might explain the formation of that question. Some of the oil companies, which includes the Stoll Company, lease or have what is known as independent contractors operating their filling stations. Some of the stations the Stoll Oil Company own and operate themselves, others they have an arrangement with persons under what is known as an independent contractor relationship. So that question is, whether any member of your family or household is employed or has ever been employed by the Stoll Oil Company filling stations or stations in which they have some interest.

- 42 Are you or any member of your family or household a stockholder or bondholder in the Stoll Oil Company, the Byrne & Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families.

I take it that your answer to that question is no.

Are you a bona fide housekeeper and citizen of the State of Kentucky, and, of course, are you over the age of twenty-one years.

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I will ask each individual member in the box—

The Court: I might interpose there, that you assume their answer is yes.

Mr. Hogan: I assume your answer to that question is yes, with the possible exception of Mrs. Davidson because she lives at the home of her father and mother. That's true, is it not, Mrs. Davidson?

Mrs. Davidson: Yes.

Mr. Beavins: I live at the home of my mother, too.

Mr. Hogan: Now, Mr. Beavins, let's find out about your arrangement there. What is your arrangement as to your residence?

Mr. Beavins: I run a farm, and I run the farm for my mother. My mother is old and I operate the farm.

43 The Court: Who owns the farm.

Mr. Beavins: My mother.

Mr. Hogan: I will ask the Court whether or not that constitutes a housekeeper.

The Court: I will get the views of counsel on it, if they will come here and talk with me a minute.

Mr. Hogan: We will come back to that.

Has any member of this whole panel in the box or any of you ever served upon a jury in this Federal Court within the past twelve months?

Mrs. Wilson: We were all on the panel before.

The Court: You understand, Mr. Hogan, that this jury—

Mr. Hogan: Oh, yes. Previous to the calling of service for this term, has any member previous to the calling of you for service at this term, which began in September, I believe—

The Court: October.

Mr. Hogan: October—ever served upon a jury in the Federal Court within twelve months prior to that time?

Any member of this panel serve upon a jury in the state court within the past twelve months?

Mr. Edelen: Yes, sir.

Mr. Hogan: The first man to answer was J. D. Edelen. You are from Springfield, are you not, Mr. Edelen?

Mr. Edelen: Yes.

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44 Mr. Hogan: Just when did you serve?

Mr. Edelen: In October.

Mr. Hogan: This year?

Mr. Edelen: Yes.

Mr. Hogan: In the Washington Circuit Court?

Mr. Edelen: Yes, sir.

Mr. Hogan: The gentleman back there. What is your name?

Mr. Abell: J. Lawrence Abell. I was on the Grand Jury in Lebanon in April and May of this year.

Mr. Hogan: What is your name?

Mr. Abell: J. Lawrence Abell.

Mr. Hogan: One other gentleman who served?

Mr. Powers: I served on the Circuit Court.

Mr. Hogan: In Jefferson County?

Mr. Powers: Meade County.

Mr. Hogan: Meade County?

Mr. Powers: Yes, last January.

Mr. Hogan: Of 1943?

Mr. Powers: Yes, sir.

Mr. Hogan: What is your name?

Mr. Powers: J. C. Powers.

Mr. Hogan: I address my questions to all of you as a whole—are you or any member of your family or household a stockholder, director or member of any business firm or corporation which now does or has in the past done business with the United States or any of its branches, agencies or corporations, including any defense or war plant owned, controlled, leased, supervised or operated in furtherance of the war effort or home defense effort?

Mr. Allen: Yes.

Mr. Hogan: Mr. Allen.

Mr. Allen: I am employed by The Mengel Company which has a great many defense orders.

Mr. Hogan: What is your position with the Mengel Company, Mr. Allen?

Mr. Allen: Buyer for one of the branches of the company.

Mr. Hogan: Then you, as buyer for one of the branches come in direct contact and business relationship with offi-

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cers and agents of the United States Government?

Mr. Allen: I do.

Mr. Hogan: Your Honor, please, I think that's sufficient for his disqualification.

The Court: I expect in these days and times everybody has some contact with the Government, even if it is by the way of paying income tax. I don't think mere contact with the Government is enough to disqualify him. You can ask him further any effect it has had on him, if it has given him any favorable or unfavorable opinion.

Mr. Hogan: Mr. Allen, without disclosing any military secrets, which I know you won't and the Court won't permit it, and we don't want those, is your business relationship and transactions with the Government and its officers and agents considerable?

Mr. Allen: Yes, sir.

Mr. Hogan: The Mengel Company is, of course, a very large woodworking institution?

Mr. Allen: Yes, sir.

Mr. Hogan: Does that company, and do you as its officer, sell to the United States Government or to its subsidiaries, agents or war plants, considerable material?

Mr. Allen: Yes, sir.

Mr. Hogan: You as the buyer supervise and have control of those transactions, do you not?

Mr. Allen: To a considerable extent, yes.

Mr. Hogan: Will that fact influence your decision in this case in which the United States Government is the plaintiff, the prosecutor?

Mr. Allen: Certainly not.

Mr. Hogan: You think that the fact that you have business relationship on a large scale with the United States Government would not enter into your decision in this case whatsoever?

Mr. Allen: I am sure it would not.

Mr. Hogan: Your Honor, please, just for the purpose of the record, I want to challenge the calling of Mr. Allen.

47 The Court: The challenge is overruled.

Mr. Hogan: And let the record note an exception.

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We will get to the next general question to all of the members. Are you employed, or have you ever been or have any members of your family or household ever been employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Refining Company, the Byrne-Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed or Sackett or Stoll families?

I take it that your answer to that question is no.

Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, William S. Speed, Mrs. Virginia Speed, Mrs. Hattie Bishop Speed, J. B. Speed, or any members of the Stoll or Sackett families?

Mrs. Ballard: Yes.

Mr. Brown: I think that question has been answered.

Mr. Hogan: It has been answered. I will withdraw that question.

Are you, or any member of your family or household, a stockholder or bondholder in the Stoll Oil Company, the Byrne Speed Coal Company, the Louisville Cement
48 Company, The Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett families?

I take it that your answer is no.

Does there exist in you such a state of mind in regard to this case or to this defendant that you cannot try this case impartially or without prejudice to the substantial rights of this defendant?

I take it that your answer is no.

Have you read at any time in the newspapers or magazines an account of the commission of the crime with which this defendant is charged?

Mrs. Greathouse: You mean recent?

Mr. Hogan: At any time. Mrs. Ballard acknowledges

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to have read about it. Mr. Allen acknowledges to have read about it. Mr. Beavins acknowledges to have read about it. Mrs. Anderson to have read about it. And Mr. Edelen, you have read about it. And your name, Madam?

Mrs. Tate: Mrs. Tate.

Mr. Hogan: Mrs. Tate, you have read about it?

Mrs. Tate: Yes.

Mr. Hogan: The lady on the back row.

Mrs. Wilson: Mrs. Wilson.

Mr. Hogan: Mrs. Wilson, you have read about it?

49 Mrs. Wilson: Yes.

Mr. Hogan: Mr. Abell, you have read about it?

Mr. Abell: Yes, sir.

Mr. Hogan: Mrs. Davidson, you have read about it?

Mrs. Davidson: Yes, sir.

Mr. Hogan: And the man from Meade County, you have read about it?

Mr. Powers: Yes, sir.

Mr. Hogan: Now, if you have, as you say you have, read an account in the newspaper, do you believe nevertheless that you can render an impartial verdict according to the law and the evidence?

By Jurors: Yes.

Mr. Hogan: Do each of you who acknowledge to have read about this article believe that you can render a fair and impartial verdict according to the law and the evidence?

By Jurors: Yes.

Mr. Hogan: Have you formed any opinion or impression based upon rumor or upon newspaper or magazine statements about the truth of which you have expressed an opinion?

Let me read that question again, so that you will understand it. Have you formed any opinion or impression whatsoever, based upon rumor or upon newspaper or magazine statements, about the truth of which you have expressed an opinion?

50 In other words, have you expressed an opinion about the truth of rumors or impressions that you have gotten from newspapers or magazines, or otherwise?

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I take it that your answer to that question is that you have not.

Have you read, or did you read, this article in the Roto-Magazine Section of the Courier-Journal of November 21, 1943, entitled, "Stoll Kidnaper Gambles Life For Freedom."

Mrs. Ballard: I read it.

Mr. Hogan: Mrs. Ballard, you read it?

Mrs. Ballard: Yes, sir.

Mr. Hogan: And Mr. Edelen, you read it?

Mr. Edelen: Yes, sir.

Mr. Beavins: I think I read that.

Mr. Hogan: And Mr. Beavins, you read it? Anybody else read it?

Did you form any opinion after reading that newspaper article as to the guilt or innocence of this defendant?

Mrs. Ballard, I will address myself to you for the present.

Mrs. Ballard: I read it just as I read a detective story.

Mr. Hogan: After you read it, what impression as to the guilt or innocence of this defendant did it make upon you?

51 Mrs. Ballard: Nothing one way or the other. I would have to listen to the evidence before I could tell.

Mr. Hogan: Now, Mr. Edelen, what impression or opinion did you form in your mind as to the guilt or innocence of this defendant after you read the article?

Mr. Edelen: None.

Mr. Hogan: Did it sway your mind or prejudice your mind in any way against this defendant?

Mr. Edelen: No, sir.

Mr. Hogan: Did anybody else acknowledge to have read that article?

Mr. Beavins: Yes, I did.

The Court: I think the gentleman on the end did.

Mr. Beavins: Yes, sir.

Mr. Hogan: What impression or bias or prejudice, if any, did the reading of this article create in your mind?

Mr. Beavins: None at all.

Mr. Hogan: Did you form any opinion as to the guilt

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or innocence of this defendant?

Mr. Beavins: No, I did not.

Mr. Hogan: After reading that article?

Mr. Beavins: I think not.

Mr. Hogan: To those of you who acknowledge to have read it, do you say that you come into this Court with a free and open mind, ready to receive the evidence and
52 the law and then be guided by what you think is right after that evidence and the law is given to you?

Mrs. Ballard: Yes.

Mr. Hogan: Does that go for you, Mr. Beavins, Mr. Edelen?

Mr. Beavins: Yes.

Mr. Edelen: Yes.

Mr. Hogan: Now, to all of you—are you guardian or ward, attorney or client, master or servant, landlord or tenant, employer or employee on wages of a member of the families of Mrs. Alice Speed Stoll or the Speed, Stoll or Sackett families?

I take it that your answer to those questions is no.

Have you ever complained against this defendant in any criminal prosecution or proceeding?

Did you or did any of you serve upon the Grand Jury which returned the indictment in this case in October, 1934?

Mr. Beavins: I was on the Jury, the Grand Jury, but I just don't remember what year it was, if this Stoll case came up. I don't know.

Mr. Hogan: The question is, whether you served upon the Grand Jury and heard evidence, and were you a member of the Grand Jury which returned this indictment in this case we are going to try.

53 Mr. Beavins: That's what I say, I don't think that I was on the Grand Jury. However, I served here one year on the Grand Jury, but I don't remember anything about this case.

Mr. Hogan: Would you not remember if such case had been presented to you in the Grand Jury room?

Mr. Beavins: Well, I think I would.

Mr. Hogan: Do you recall that it was or it was not?

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Mr. Beavins: No, sir, I do not.

Mr. Hogan: You have a fairly good memory, do you not?

Mr. Beavins: Fairly good; yes, sir.

54 Mr. Hogan: You have no recollection that you were on that Grand Jury?

Mr. Beavins: No.

Mr. Hogan: Were you a member—that is, all of you collectively or any of you, a member of the former petit jury in this Federal Court sworn to try Thomas H. Robinson Sr. and Mrs. Frances Robinson who were jointly indicted with this defendant in October 1934?

I take it by your silence that your answer is no.

Are you now, or have you ever been, or are any members of your family or household stock or bondholders, office holders, or directors of any of the United States government corporations, associations, or agencies such as the Federal Land Bank, the Federal Reserve Bank, the Reconstruction Finance Corporation, the AAA, or any other of the United States alphabetical divisions or subdivisions?

Mr. Beavins: Yes, I am.

Mr. Hogan: Now, Mr. Beavins, what is your connection with them?

Mr. Beavins: I am connected with the Triple A in Green County.

Mr. Hogan: That is the AAA?

Mr. Beavins: Yes.

Mr. Hogan: In what capacity?

55 Mr. Beavins: I am community member chairman.

Mr. Hogan: Do you receive any compensation as the Chairman of that AAA?

Mr. Beavins: Yes sir.

Mr. Hogan: By whom is that salary paid you?

Mr. Beavins: I suppose it comes from the Treasurer of the United States.

Mr. Hogan: In other words you are on the payroll of the United States government?

Mr. Beavins: Yes.

Mr. Hogan: Now, Mr. Edelen, I believe you are a member of what?

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Mr. Edelen: I didn't understand about the Federal Land Bank.

Mr. Hogan: Yes. Do you have any connection with the Federal Land Bank?

Mr. Edelen: No sir. I misunderstood you. I borrowed some money—

Mr. Hogan: (Interrupting): No. I will read my question again. I expect a lot of people who have farms have called on the Federal Land Bank for a little financial assistance.

Mr. Edelen: I didn't understand you.

Mr. Hogan: Are you now, or have you ever been, or **56** has any member of your family or household been stock or bond holders, office holders, or directors in any of the United States government corporations, associations or agencies such as the Federal Land Bank, the Federal Reserve Bank, the Reconstruction Finance Corporation, the AAA, the Commodity Credit Corporation, or any of the United States alphabetical divisions or subdivisions?

Mr. Edelen: No sir.

Mrs. Ballard: My husband is an Appeals Agent. Does that come under that?

Mr. Hogan: No. I have another question, Mrs. Ballard. If you will just reserve your answer, we will come down to that.

Mr. Powers: I am.

Mr. Hogan: What is your answer?

Mr. Powers: I am a member of the Triple A.

Mr. Hogan: Do you receive a salary, Mr. Powers, for that service?

Mr. Powers: Yes sir.

Mr. Hogan: And that salary is paid to you by the Treasurer of the United States?

Mr. Powers: Yes sir.

Mr. Hogan: Is any other member of the jury connected in the manner I have indicated with those agencies or subdivisions?

57 I take it by your silence that you are not.

Are you or any member of your household now or

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have you at any time ever been directly or indirectly employed by the United States?

Mr. Beavins: I have.

Mr. Hogan: Of course that answer goes to you and to Mr. Powers. Now, Mr. Allen, what is your answer to that question?

Mr. Allen: I was an officer in the army in the last war.

Mr. Abell: And I was a seaman in the Navy in the last war, in 1918.

Mr. Hogan: What type officer were you, Mr. Allen?

Mr. Allen: Captain in the Artillery.

Mr. Beavins: I was in the ROTC during 1918.

Mr. Hogan: You didn't get into the SATC, did you, Mr. Beavins?

Mr. Beavins: I was in the ROTC.

Mrs. Ballard: Does my question come in there. My husband is an Appeals Agent, and he was also in the last war.

Mr. Hogan: You are affected by that question because it says any member of your household.

Mrs. Ballard: That's right.

Mr. Hogan: What was Mr. Ballard's office in the last war?

58 Mrs. Ballard: Captain in the Coast Artillery.

Mr. Hogan: Your husband was Mr. Breaux Ballard?

Mrs. Ballard: Yes—a Captain in the Coast Artillery.

Mr. Hogan: Now to all of you, do you now or have you ever received a pension, salary, bonus, soldier's or sailor's allotment benefit or remuneration in any form from the United States of America? That is, do you now or have you ever? The answer is the same for Mr. Allen that previously he received a captain's pay. And you, Mr. Edelen?

Mr. Edelen: I received a soldier's bonus.

Mr. Hogan: And you, Mr. Abell?

Mr. Abell: I received a soldier's bonus.

Mr. Hogan: To all of you that did not answer, I take it that your answer is no.

Mrs. Ballard: Doesn't that apply to the same thing? My husband received pay in the last war, and I suppose

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a bonus—I don't know.

Mr. Hogan: Or do you? I will put it that way. The next question is do you receive, or have you ever received, a railroad retirement pension, allotment or payment?

I take it that your answer is no.

Do you now, or have you ever, received directly or indirectly from the United States any subsidy allowance, bonus or crop cut-out payments?

59 Mr. Abell: Yes, sir, I have.

Mr. Hogan: Mr. Abell, you have received a bonus?

Mr. Abell: Yes.

Mr. Hogan: Mr. Powers, from Meade County, you have received what?

Mr. Powers: Crop cut-out payment.

Mr. Hogan: Are you still receiving those?

Mr. Powers: Yes.

Mr. Hogan: Those payments are made to you by the United States government?

Mr. Powers: Yes.

Mr. Hogan: And now who else had an answer?

Mr. Edelen: I have.

Mr. Hogan: What do you receive?

Mr. Edelen: From the Triple A.

Mr. Hogan: Is that generally spoken of as a crop cut-out payment?

Mr. Edelen: Yes.

Mr. Hogan: Mr. Beavins, do you likewise receive such payment?

Mr. Beavins: Yes.

Mr. Hogan: And of course that payment is made directly to you by the United States of America?

Mr. Beavins: Yes.

Mr. Hogan: Mr. Abell, do you receive a crop cut-
60 out payment?

Mr. Abell: Yes, I do.

Mr. Hogan: Paid to you by the government of the United States?

Mr. Abell: Yes.

Mr. Hogan: Does anybody else have an answer to that question?

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As to the rest of you not answering, I take it that your answer is no.

Are you now, or have you ever been, a member of any Board, Commission or Agency of the United States such as the Civil Service, War Manpower Commission, Transportation Commission, Rationing Boards, Labor Boards, Office of Price Administration, Selective Service, and Training Boards, sometimes known as Draft Boards, or any other board or commission? And if you are not on any of those boards, or have never been, is any member of your family or household now on such board or commission or have they ever been on such boards?

Mrs. Ballard: Yes, that is mine.

Mr. Hogan: That is your question?

Mrs. Ballard: Yes.

Mr. Hogan: Mrs. Ballard, is your husband on the draft board or rationing board?

Mrs. Ballard: I don't know.

61 Mr. Hogan: Does anybody else have an affirmative answer to that question?

I take it by your silence that you are answering in the negative.

Are you now, or have you ever been an office holder or appointee of the United States government or any of its agencies or boards?

Mr. Beavins: Yes.

Mr. Edelen: Yes.

Mr. Powers: Yes.

Mr. Hogan: Mr. Beavins, Mr. Edelen and Mr. Powers, do you have anything else to add to that except the fact that you are on the AAA?

Mr. Beavins: No.

Mr. Edelen: No.

Mr. Powers: No.

Mr. Hogan: Does any other member of the panel have an affirmative answer to make to that question?

I take it then by your silence that your answer is no.

Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense? I may elaborate on the question just a little bit and ask you if

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the fact that this defendant had interposed or may
62 interpose during the course of this trial a plea of insanity would that create in your mind a suspicion that that is a sham defense or an excuse to try to obtain his freedom and acquittal at your hands?

Now that is a very important question and I would like to have you deliberate a moment in your mind to find out from your own conscience whether you have any prejudice against this defendant or for that matter any defendant who interposes as a defense a plea of insanity at the time the crime which is alleged to have been committed and for that matter after that time and some time before the crime is alleged to have been committed.

I take it by your silence that your answer to that question individually and collectively is no.

Do you have or will you have any prejudice against this defendant interposing, if he does, a plea of insanity as a defense if it should likewise be shown that he has made a recovery and is restored to a sane condition?

I want you to be very deliberate about that, and frank, for that matter, and tell me whether or not you believe that because one who has been insane and then is shown to have recovered, whether that fact will prejudice or influence your verdict in this case?

Now, Mr. Beavins, I am going to ask you separately
if you have any prejudice on that assumption or on the
63 basis of the question I just asked you?

Mr. Beavins: No, I think if the doctor examined him or anything like that, I think the responsibility would lay on the doctor.

Mr. Hogan: Mr. Edelen?

Mr. Edelen: No, sir.

Mr. Hogan: I might make a little statement as to why I want that question answered. Sometimes I have heard it remarked that people just unscrupulously and without any real reason at all interpose a plea of insanity just to escape punishment. Now do any of you entertain such a belief generally and particularly as to this defendant, Thomas H. Robinson, Jr.?

Mrs. Tate, are you of that frame of mind?

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Mrs. Tate: No.

Mr. Hogan: Are you?

Mrs. Greathouse: Yes.

Mr. Hogan: What is your name?

Mrs. Greathouse: Mrs. Ida Greathouse. I think what the gentleman said, if the doctor said that, it would be on him if I understand the question.

Mrs. Tate: That is what I mean, too.

Mr. Hogan: What did you say?

Mrs. Tate: If the physicians have found him to be insane.

64 Mr. Hogan: The question isn't whether physicians have found him to be insane or sane, but the question is whether you feel that a person who has been found to be insane or whether he has been found to be sane or not, if he interposes a plea of insanity whether or not that would create in your mind a suspicion that that is a fabrication or a sham defense in order to become liberated?

Mrs. Tate: If I understand the question, no.

Mr. Hogan: Mrs. Tate and Mrs. Greathouse, your answer is to that, no?

Mrs. Tate: Yes.

Mrs. Greathouse: Yes.

Mr. Hogan: Now as to you ladies, Mrs. Tate and Mrs. Greathouse, if it should thereafter be shown that this defendant, having been insane and after it should be shown, if it is, that he was insane at the time this crime in this indictment is alleged to have been committed, that he was restored to sanity, would you entertain any doubt that perhaps in the beginning he at no time was insane?

Mr. Brown: I don't follow that. I am lost on his question. The answer could be both yes and no.

Mr. Hogan: Will the Reporter read the question?

(At this point the last question above of Mr. Hogan was read.)

Mr. Brown: I think that question could be answered yes, no, or maybe.

65 The Court: I think the question is somewhat involved. I think you should break it up so that the jury may give it more attention.

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Mr. Hogan: I will ask the whole panel, to save time. If it should be shown that this defendant, prior to the time set out in this statement, and prior to the time of the crime, set out in the indictment, was alleged to have been committed, that the defendant, Thomas Henry Robinson, Jr., was insane, would that create in your mind any suspicion that he was using that as a sham or a cloak to hide behind the matters and things alleged in this indictment in order to obtain his acquittal.

Mr. Beavins: On his own testimony I would doubt it.

Mr. Hogan: Then you do have some doubt in your mind as to the genuineness of that plea of insanity, do you not, Mr. Beavins?

Mr. Beavins: Unless it was substantiated by a doctor.

Mr. Hogan: In other words, I take it that you generally are suspicious on the defense of insanity?

Mr. Beavins: Yes.

Mr. Hogan: Judge, I think that is cause for challenge.

The Court: Would you weigh all of the testimony **66** in the case, Mr. Beavins, and use your judgment as a juror, giving credibility to each witness that you thought it was entitled to and render a fair and impartial verdict from all of the evidence.

Mr. Beavins: Yes, sir.

The Court: I think a juror has the right to judge the credibility in a case so long as he doesn't say that that closes his mind to the other evidence in the case.

Mr. Hogan: If Your Honor please, the juror answers that he is suspicious of a plea of insanity. We don't want superstitious jurors in this case or in any other case.

The Court: Does that state of mind or opinion, Mr. Beavens, influence you in any way in giving a fair and impartial verdict in this case?

Mr. Beavin: No, sir. Not if the evidence there convinces me I am open to conviction.

Mr. Hogan: What is Your Honor's ruling on that?

The Court: Is there any ruling to be made? Have you challenged this juror?

Mr. Hogan: Let it be reserved. I will talk to the Court about that a little bit later after I finish my questions

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about the challenges.

The Court: All right.

Mr. Hogan: Continuing that line of questioning about insanity, my question is directed to the whole 12
67 jurors now. If it should be shown that this defendant had been adjudicated insane by a court or courts of competent jurisdiction and had never been restored to sanity by any jurisdictional proceeding, and that presumably he was, at the time of the commission of the crime alleged in this indictment, and that later he was restored to a sane condition, would you entertain any suspicion or prejudice against him or against the defense of insanity at the time set out in the indictment?

Now think that question over, ladies and gentlemen.

Juror: Will you please repeat that?

The Court: I believe possibly the jury would get a better view if I should tell them this: As Mr. Hogan has indicated, there may be a plea of insanity or a defense of insanity imposed in this case, based upon many other things the fact that at the time of the commission of the alleged offense the man had been adjudicated insane.

When Robinson was arraigned here a few weeks ago, I asked him whether or not he was sane at the present time and he answered that he was.

Now that shows that at one previous time he was insane and at the present time he claims to be sane. Now with the question based upon that fact, does that create any suspicion or belief that he was not insane at the time of the alleged crime?

68 Mr. Hogan: I think, Your Honor, you should go a little bit further and say not only that he claims to be sane but that the Court has made his own inquiry into that fact—

The Court (Interrupting): That is a fact. The Court has appointed four doctors to examine him and they have reported to me that at the present time he is sane.

Mr. Hogan: I want the jury to understand that he was not claiming promiscuously insanity at one time and sanity at another time.

If the defense of insanity is shown, it will be shown

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that he was at one time, or more than one time, judicially declared an insane person and despite the fact that he himself is declaring present sanity Your Honor has made his own inquiry into his present sanity at the hands of four psychiatrists or doctors of this community and they found him sane in accordance with the contention of the defendant that he is now sane.

So it is not really the defendant's own contention but it is a matter of court record that he is presently sane.

Now, with those premises before you, do you entertain any suspicious, prejudice or bias or doubt as to his guilt or innocence, or would you after hearing the evidence in this case and the law as given to you by His Honor?

I take it by your silence that you wouldn't and that you do not entertain any such prejudice or bias or
69 suspicion.

Is there any person related to you by ties of blood or marriage now serving in the military service in any of its branches? Now, Mrs. Davidson, we have your answer.

Mrs. Davidson: Yes.

Mr. Hogan: Mrs. Ballard, we will take you.

Mrs. Ballard: I have a son in the Navy—naval aviation. And I have a son-in-law in the Army.

Mr. Hogan: What is the name of your son-in-law?

Mrs. Ballard: John Pryor Castleman. I think he is a Captain.

Mr. Hogan: Now who are some of the others? I will take the ladies first. Mrs. Greathouse?

Mrs. Greathouse: I have a nephew—Phillip Noel.

Mr. Hogan: Is he in the active service?

Mrs. Greathouse: He is a captain—a doctor.

The Court: In the medical corps?

Mrs. Greathouse: In Louisiana, yes.

Mr. Hogan: Now, Mrs. Anderson?

Mrs. Anderson: I have a brother in the air corps.

Mr. Hogan: All right. Some other lady?

Mrs. Griggs: I have a nephew that I raised in San Francisco—he is a private, Charles Coomes.

Mr. Hogan: And what is your name?

Mrs. Griggs: My name is Griggs.

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70 Mr. Hogan: Anybody else?

Mrs. Wilson: I have a son who is a Captain in the aviation.

Mr. Hogan: Name?

Mrs. Wilson: Charles Wilson. And I have a son-in-law who is a paratrooper.

Mr. Hogan: What is the name of your son-in-law?

Mrs. Wilson: Charles J. Snyder, Lieutenant.

Mr. Hogan: A paratrooper?

Mrs. Wilson: Yes, sir.

Mr. Hogan: Mr. Allen?

Mr. Allen: I have a first cousin in the Navy, on submarine duty.

Mr. Hogan: What is his name?

Mr. Allen: Edward H. Allen.

Mr. Hogan: Anybody else?

Mrs. Allen: I have a brother-in-law in the Navy.

Mr. Hogan: What is his name, Mr. Allen?

Mr. Allen: John P. Storks.

Mr. Hogan: All right. Mr. Edelen?

Mr. Edelen: I have a daughter and eight nephews in the service.

Mr. Hogan: What branch of the service is your daughter in?

71 Mr. Edelen: SPAR—Coast Guard.

Mr. Hogan: Anybody else?

Mr. Powers: I have a son in the Army.

Mr. Hogan: Mr. Beavin?

Mr. Beavin: I have a son in the air farce, and two brothers-in-law in the Army.

Mr. Hogan: Anybody else?

Mr. Beavin (Continuing): And a nephew in the air force.

Mr. Hogan: You Marion County people really supply the Army.

Mr. Beavin: Yes, and I have first and second cousins—I don't know how many there are of them.

Mr. Hogan: Mr. Abell?

Mr. Abell: I am in about the same predicament as Mr. Beavin. I have a lot of cousins whom I have not seen since

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they were little tots—how many are in the service, I don't know. I have a nephew who is a Chief Petty Officer somewhere in the Pacific.

Mr. Hogan: You don't have any children or grandchildren in the service?

Mr. Abell: No.

Mr. Hogan: If you should, after hearing the evidence and the law as given by His Honor to you entertain a reasonable doubt, either as to the capacity of this defendant

—I mean legal capacity by reason of his insane
72 condition—to commit any of the acts charged in the indictment or as to his guilt—now the question is, if you should entertain a reasonable doubt either as to his legal capacity to commit any of the acts charged or as to a reasonable doubt as to his guilt, would you resolve that doubt as to this defendant and acquit him? Now, that calls for an affirmative answer unless your answer is in the negative.

Mr. Beavin?

Mr. Beavin: Yes.

Mr. Hogan: Mr. Edelen?

Mr. Edelen: Yes.

Mr. Hogan: Mrs. Tate?

Mrs. Tate: Yes.

Mr. Hogan: Mrs. Anderson?

Mrs. Anderson: Yes.

Mr. Hogan: Mrs. Griggs?

Mrs. Griggs: Yes.

Mr. Hogan: Mrs. Wilson?

Mrs. Wilson: Yes.

Mr. Hogan: Mr. Powers?

Mr. Powers: Yes.

Mr. Hogan: Mr. Allen?

Mr. Allen: Yes.

Mr. Hogan: Mr. Abell.

Mr. Abell: Yes.

73 Mr. Hogan: Mrs. Ballard?

Mrs. Ballard: Yes.

Mr. Hogan: Mrs. Greathouse?

Mrs. Greathouse: Yes.

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Mr. Hogan: Have you ever sat upon any jury in any court which either recommended or imposed the death penalty?

Mr. Beavin: I have.

Mr. Hogan: Anybody else?

Mr. Allen: Yes.

Mr. Hogan: The question is whether you have at any time, regardless of what time, ever sat upon a jury and either recommended the imposition of the death penalty or, as a member of a jury, voted for the death penalty?

Mr. Beavin: No.

Mr. Hogan: You say no now and a moment ago you said yes. Did you ever sit upon a jury that imposed the death penalty?

Mr. Beavin: No.

Mr. Hogan: A moment ago you answered yes?

Mr. Beavin: I thought you said had I ever sat upon a jury that asked for a death penalty.

Mr. Hogan: No. The question is, have you ever voted for the death penalty or recommended it to be given?

Mr. Allen: Would that be juries in criminal court?

Mr. Brown: He must be talking about Court Marshal Courts.

74 Mr. Hogan: I will ask you if at any time, either in civil court or a court martial, have you ever voted to give a man a death penalty?

Mr. Allen: I have in a Court martial.

Mr. Hogan: Was that death penalty imposed?

Mr. Allen: No sir, it was not.

Mr. Hogan: But you yourself, as one of the members of the Court martial, voted for the death penalty?

Mr. Allen: I did.

Mr. Hogan: Has anybody else of this panel or in this box ever voted to recommend or to impose—now I use those terms ‘recommend’ and ‘impose’ for this reason, as His Honor has already told you, in the Federal Court the jury does not impose the sentence. Ordinarily in a criminal case here the jury is confined to the proposition of whether they find the defendant guilty or not guilty. In the usual case in this Court, if there is a verdict of guilty

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at the hands of a jury, the Court imposes the sentence, but in this case, as charged in this indictment, if certain facts or evidence should be produced, it will be within the prerogative of this jury to recommend to His Honor that the death penalty be imposed.

Now that the Court may follow your recommendation, or the Court has the right to disregard it. But in this case we are about to go to trial in, it may or may not be
 75 come your prerogative to recommend that the death penalty be imposed. So I ask you the question, whether or not you have ever sat upon any jury that either recommended or imposed the death penalty?

Now Mr. Allen has answered and Mr. Beavin has clarified his previous answer.

Has any other member ever sat upon such a jury that either recommended or imposed the death penalty?

I take it by your silence to that question that with the exception of Mr. Allen and Mr. Beavin that you have not.

Do you believe that simply because this defendant has been indicted that that is some evidence of his guilt? Or would the fact that this defendant has been indicted create in your mind a prejudice, bias or suspicion that he may be guilty?

In other words, ladies and gentlemen, do you believe that simply because there is an indictment returned that that is some evidence of guilt? Or do you think that unless the government (or the State for that matter) was wholly convinced or thoroughly convinced that the man was guilty that it would not have returned an indictment?

Do any of you entertain any such ideas as that? As His Honor has told you, an indictment is merely an accusation.

As you perhaps already know, the Grand Jury
 76 returns usually an indictment upon evidence only from witnesses produced by the prosecution. The defendant in most cases usually does not appear in person, nor does the defendant or the accused person have any representative or witnesses before the Grand Jury. It is a one-sided affair, so to speak.

So now do you, with that knowledge of that procedure, believe that merely because the Grand Jury of this Court

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has returned an indictment against the defendant, that that is some evidence of his guilt or that that creates or would create in your mind a suspicion, bias or prejudice?

I take it by your silence that your answer to those questions is no.

I will pass the jury to you, Mr. Brown.

Mr. Brown: If we are going to take a recess we might be able to do it now and I may consider this matter?

The Court: All right. Members of the Jury, I will ask you to go into the jury room in the custody of the Marshal during the recess. Do not discuss this matter among yourselves or with anyone, nor should any of the other members of the jury panel. Remain close by so the Marshal may get you in a few minutes.

At this point there was a short recess, after which the following proceedings were had:

77 Mr. Hogan: I would like for the Reporter to take this out of the hearing of the jury.

Out of the hearing of the jury the following proceeding was had in the presence of the Court, Mr. Hogan and Mr. Brown.

Mr. Hogan: The defendant, by his counsel, moves the Court to permit challenge for cause, directed to Mr. Allen, to be withdrawn, subject to be renewed if the defendant so desires after the government has exercised its challenges or willingness to accept the jury. In other words, I want to wait until the government has indicated its choice of the jury.

Mr. Brown: No.

The Court: You mean you want to renew it later?

Mr. Brown: You can always renew it.

Mr. Hogan: I think I made it prematurely. I don't have to make it until the government has indicated its choice.

The Court: Well, I don't know—

Mr. Hogan (Interrupting): I am sure of my position.

Mr. Brown: That's all right.

The Court: I am interested in getting the record clear as to whether or not there is any other challenge for cause at this time.

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Now there was some question of being qualified as a housekeeper of some of the jurors. You have indicated
78 you might challenge Mr. Beavin but you have also indicated to me that you think there was no challenge in existence at that time?

Mr. Hogan: Suppose I reserve all my challenges either preemptorily or for cause until the government has exercised its challenges?

The Court: Well you may except for disqualification. If there is going to be any challenge for disqualification, I think the facts should be a little bit more fully stated.

Mr. Brown: What difference does it make whether they are housekeepers.

The Court: I think the fact that the statute says if they are not qualified does not disturb the verdict unless an exception is taken.

Mr. Hogan: That means that either side accepts the jury knowing of the disqualification, and that would not be grounds for reversal

The Court: That is what I am getting at. You know the facts about Mrs. Davidson and Mr. Beavin. Are you going ahead with them?

Mr. Hogan: No. I am going to ask some more questions.

The Court: All right.

Mr. Hogan: What is Your Honor's ruling on my motion?

79 The Court: On your challenge for cause, you may take those later, but as to the challenge for qualifications you will have to take those now. You can't require the government to go on until you have finished that.

Mr. Hogan: All right.

In the presence of the jury the following proceedings were had:

Mr. Hogan: Mrs. Davidson, I want to interrogate you a little bit further on your status as a housekeeper. It is not my purpose to humiliate you or embarrass you or to pry into your private life, but the statute requires the jurors to be a qualified housekeeper, and we are directing an inquiry into that status.

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What is your father's business?

Mrs. Davidson: He is secretary of the Elks.

Mr. Hogan: Is that Mr. Chris Franz?

Mrs. Davidson: Yes.

Mr. Hogan: And your mother's maiden name was what?

Mrs. Davidson: Baumeister.

Mr. Hogan: Does she have a relative who is an attorney?

Mrs. Davidson: Yes, sir.

Mr. Hogan: He is now with one of the government agencies, I believe the OPA, or some such agency?

Mrs. Davidson: I believe he died.

80 The Court: Mr. William F. Baumeister was an attorney who died here several years ago.

Mr. Hogan: That was a tall gentleman?

Mrs. Davidson: I didn't know him.

Mr. Hogan: You did not know your Uncle?

Mrs. Davidson: No.

Mr. Hogan: He was a rather large man?

Mrs. Davidson: I think he is dead.

Mr. Hogan: That man that I refer to was an attorney who is dead. Now that was your Uncle?

Mrs. Davidson: No, he was not my Uncle. He would be about my third or fourth cousin.

Mr. Hogan: Who maintains the apartment or house where you stay?

Mrs. Davidson: My father pays all of the expenses and my mother has not been in good health, so I have been taking care of the house for her for the past ten years.

Mr. Hogan: You do not earn any salary or contribute toward any of the expenses?

Mrs. Davidson: No.

Mr. Hogan: And you just live there with your father and mother?

Mrs. Davidson: Well I have an income of my own through property.

Mr. Hogan: You have property in your own name?

81 Mrs. Davidson: Yes.

Mr. Hogan: But you do not reside or live in any of

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the property in your name?

Mrs. Davidson: That is right.

Mr. Hogan: How long have you been living at your present address with your father and mother?

Mrs. Davidson: I have never lived anywhere else. The years when I was married we still lived at home. At this present address, I have been there fifteen years. That is, we have lived on Meadow Road fifteen years.

Mr. Hogan: Is there any other fact in connection with your family status that you would like to discuss?

Mrs. Davidson: Well I will answer anything you want to know. I have a son who lives there with me.

Mr. Hogan: You are not employed, I believe?

Mrs. Davidson: No, I am not employed. As I have said, I have an income of my own.

Mr. Hogan: But your father and mother look after the household expenses?

Mrs. Davidson: They look after the house.

Mr. Hogan: And pay all of the expenses?

Mrs. Davidson: Yes.

Mr. Hogan: Now, Mr. Beavin, your mother, I believe you stated, owns the farm where you reside?

Mr. Beavin: Right.

82 Mr. Hogan: Is she a widow?

Mr. Beavin: Yes.

Mr. Hogan: Do you have any children living there with you?

Mr. Beavin: Yes.

Mr. Hogan: How many?

Mr. Beavin: Five.

Mr. Hogan: Does your wife live there with you?

Mr. Beavin: Yes.

Mr. Hogan: Who contributes toward the household expenses?

Mr. Beavin: Well I pay my bills and she pays her bills.

Mr. Hogan: In other words, you pay your own separate household bills?

Mr. Beavin: Well we live in what you might call an apartment house. I run the farm and set my own table,

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and pay my own expenses.

Mr. Hogan: Where is this property in which you live located? In the the country or at Lebanon?

Mr. Beavin: Five or six miles from Lebanon.

Mr. Hogan: Is that near St. Mary's?

Mr. Beavin: That is right.

Mr. Hogan: Is it a large dwelling house?

Mr. Beavin: I expect there are 14 or 15 rooms in it. It is an old colonial home.

83 Mr. Hogan: Is it separated into separate apartments?

Mr. Beavin: One.

Mr. Hogan: You and your family have the general run of the house, in other words?

Mr. Beavin: Well, we live on one side of the house and mother lives on the other.

Mr. Hogan: Well, do you have authority over the section of the house your mother lives in?

Mr. Beavin: No, sir.

Mr. Hogan: She does have some authority over the part that you live in because she owns it?

Mr. Beavin: That is right.

Mr. Hogan: Do you operate and see that the farm is tended?

Mr. Beavin: Yes, sir.

Mr. Hogan: Does she exercise some supervision or control over that?

Mr. Beavin: Well if I go to her for advice, she gives me advice.

Mr. Hogan: And you take it, of course?

Mr. Beavin: Yes.

Mr. Hogan: She is general manager and you are the operator of the farm. Is that right?

Mr. Beavin: I would hardly call it that way. If I want to do anything regardless of what it is, she okays it.

84 Mr. Hogan: You accede to her wishes, I guess?

Mr. Beavin: Yes, as a son does to his mother.

Mr. Hogan: You could not sell this farm or dwelling without her consent?

Mr. Beavin: No, sir.

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Mr. Hogan: And you, of course, wouldn't attempt to?

Mr. Beavin: No, sir.

Mr. Hogan: Has any other fact in connection with your status as a housekeeper come to your mind that you would like to discuss?

Mr. Beavin: I am just like the lady up there, I can answer any question you want to ask. But the farm is handled as Mrs. Beavin and son—a partnership.

Mr. Hogan: But that refers to the farm?

Mr. Beavin: That is right.

Mr. Hogan: But we are speaking of where you live as to whether or not you are a housekeeper.

Mr. Beavin: I have to pay for the grocery bills, etc. I couldn't see why you wouldn't call me a housekeeper.

Mr. Hogan: You buy your own groceries?

Mr. Beavin: Yes.

Mr. Hogan: Who owns the furniture that you utilize?

Mr. Beavin: I do.

Mr. Hogan: But your mother does have her own furniture?

85 Mr. Beavin: Yes.

Mr. Hogan: You maintain your family under the roof with your mother?

Mr. Beavin: Yes.

Mr. Hogan: But you pay your own living expenses, and she pays hers?

Mr. Beavin: Yes.

Mr. Hogan: How long have you lived at that place?

Mr. Beavin: All my life. I was born and raised there.

Mr. Hogan: Are you at liberty to go and come as you see fit and use the premises?

Mr. Beavin: That is right.

Mr. Hogan: I believe that is all.

Out of the presence or hearing of the jury, with Mr. Hogan, Mr. Brown and the Court in conference, the following proceeding occurred:

Mr. Hogan: I think Mr. Beavin is a housekeeper, but I don't think Mrs. Davidson is a housekeeper.

Mr. Brown: Yes, she is.

By the Court: There is no question about Mr. Beavin.

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Mr. Hogan: No, but Mrs. Davidson doesn't buy a dime's worth on the expenses.

The Court: I will ask her.

86 In the presence of the jury the following proceedings were had:

The Court: Mrs. Davidson, I believe you say you have lived all your life—

Mrs. Davidson (Interrupting): Not in the same place. I have been living out there fifteen years.

The Court (Continuing): With your father and your mother?

Mrs. Davidson: Yes, sir.

The Court: Do you have one child now living with you?

Mrs. Davidson: Yes, sir.

The Court: Do you support that child?

Mrs. Davidson: Yes, sir.

The Court: Do you buy anything or contribute anything to the operation of that house?

Mrs. Davidson: Well I buy all of his and my clothes, and I pay my own expenses other than food. We have our own car. I just don't pay for the table.

The Court: Do you pay any of the expenses of the help or anything like that?

Mrs. Davidson: At times.

The Court: Do you pay any of the coal, heat or light bills?

87 Mrs. Davidson: No, I don't pay any of the household bills but I do the shopping and I do all of the buying.

The Court: You do the housekeeping for your mother?

Mrs. Davidson: Yes, sir.

The Court: Your mother is sick?

Mrs. Davidson: Yes, sir.

The Court: And you keep the house?

Mrs. Davidson: Yes, sir.

The Court: And arrange for the meals?

Mrs. Davidson: Yes. And I pay all of my own expenses.

The Court: The Court thinks both of jurors are qual-

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ified.

Mr. Brown:: We accept the jury.

The Court: To the four jurors who have been previously excused for various reasons, Mr. Adams, Mr. Basham, Mr. Speed and Mr. Akerman, you will excused and go to the Clerk's office and get your certificate and to the Marshal's office and get your compensation for the time, and I might say that will go likewise for the jurors who are excused from the box by either side or by the Court.

The following took place out of the hearing of the Court:

Mr. Hogan: I want the record to show an exception to His Honor's ruling that Mrs. Davidson is a house-
88 keeper and a qualified juror.

Now, if Your Honor please, we do not want to offend any of these jurors by challenging any of them for cause. Is it all right for me come up here and challenge them out of the hearing of the jury?

The Court: Yes.

Mr. Hogan: I move the Court to challenge for cause Mr. Winthrop Allen and Mrs. Jane Ballard.

The Court: You haven't anything to advise the Court except what you brought out, their acquaintanceship with the people and certain activities?

Mr. Hogan: Certain acquaintanceship, but Mr. Allen is very actively and unusually engaged as a buyer and seller to the United States government.

The Court: He said that would not make any difference, didn't he?

Mr. Brown: Yes.

Mr. Hogan: I know he said that, but in the case of Hess' Administrator vs. L & N, 249 Ky. 624, which is a case in which an administrator called an administrator of an estate who owned stock in a railroad company—

The Court (Interrupting) The administrator himself was a juror?

Mr. Hogan: Yes. Now he did not own stock himself, but a member of his family owned stock and he was
89 appointed and qualified as administrator; and as ad-

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ministrator of course that stock came into his hands and he controlled it as an asset of the estate. He was called as a juror and served in a case in which the L & N Railroad was a defendant. The plaintiff lost the case and appealed, and it was reversed on the idea that after the trial it was discovered that this administrator had in his control this stock, and they went thoroughly into that as to what influence that might have on his verdict, even though he was not the personal owner of that stock. The opinion held among other things that the parties must not only have a fair trial but they must at all times feel that they have a fair trial.

And in the case of Drury vs. Frank, 247 Ky 758; 57 SW (2) 984, was a case in which Commissioner Drury of the Kentucky Court of Appeals was involved in an automobile accident and as a result he sustained personal injuries. A jury gave a verdict and Mr. Drury complained that the verdict was entirely inadequate and out of proportion to the type and amount of his injuries that he had sustained.

In that case, by reason of the fact that Mr. Drury was himself a Commissioner of the Kentucky Court of Appeals, a special Court of Appeals was impaneled and decided the case on appeal. In that case there was some evidence
90 brought out that some juror, I believe, had been sued or had had some business relationship with one of the parties to the litigation. And it was held in that case that, like the Hess Administrator case, that the litigant must not only have a fair trial but that he must feel that he has had a fair trial, and that is a case where it is like where Caesar demanded that not only must his wife be virtuous but beyond suspicion.

In this case we don't want any suspicion that we cannot get a fair trial at the hands of a man who is tremendously interested by his business connection and association with a firm that does a large volume of business with the United States government.

The Court: I believe Mr. Brown you said that not even government employees are not excluded?

Mr. Brown: Yes, that's right.

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The Court: Are there any rulings on that?

Mr. Brown: Yes. I can give them to you after the recess.

The Court: All right.

Mr. Hogan: Mr. Allen is more than an employee. He is a buyer.

Mr. Brown: He is an official.

Mr. Hogan: Yes, and he has connection with the government.

91 Mr. Hogan: Now, of course, we have elicited from Mrs. Ballard and Mr. Allen an acquaintanceship that means in the social and civic and musical contacts with the Stoll, Speed and the Sackett families. That is more than just a passing or speaking acquaintance. It is an acquaintance that is calculated to and no doubt will engender in the minds of those two jurors an unconscious prejudice and bias against this defendant and in favor of the members of the Stoll, Speed and Sackett families, despite their answers to the contrary.

The Court: I understand but what I had in mind was with respect to the other jurors that you indicated you might challenge for cause, you waive those challenges? There are only two you are challenging, Allen and Mrs. Ballard. I don't want there to be a mistake on the record that you have made a challenge heretofore that I have not passed on.

Mr. Hogan: No. I am trying to turn over in my mind whether I should ask for challenges for other than those two.

The Court: Now is your time to do it.

Mr. Hogan: Those two are the ones I specifically challenge.

The Court: Your challenges will be overruled.

Mr. Hogan: Exception.

92 At this point the proceedings continued in the hearing of the jury as follows:

The Marshal: You whose names I call will vacate the box:

Mrs. Mildred Anderson

Mrs. Gertrude Griggs

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Winthrop Allen

Mrs. Ida Greathouse

Mrs. Ballard

Mrs. Wilson

Mrs. Katherine Tate

That is seven—five remaining.

The Court: Now, those seven who were just excused, Mrs. Anderson, Mrs. Griggs, Mr. Allen, Mrs. Greathouse, Mrs. Ballard, Mrs. Wilson and Mrs. Tate, you are excused from further jury service at this trial. You will go to the Clerk's office for your certificate and then to the Marshal's office for your compensation.

It now comes to the time of adjournment for lunch, members of the Jury panel. I am going to ask the five of you who are in the box to have lunch with the Marshal at the Brown Hotel. Do not discuss this matter among yourselves or with anyone or allow anyone to discuss it in your presence. I will say that to the other members of the jury panel who have not yet been interrogated or put into
93 the jury box.

We will adjourn until 2 o'clock.

At this point Court adjourned until 2 o'clock, at which time the following proceedings were had:

The Court: Mrs. Davidson, before we go further let me ask you a few more questions.

Mrs. Davidson: All right.

The Court: How old is your son?

Mrs. Davidson: Seventeen.

The Court: What school does he go to?

Mrs. Davidson: Male High.

The Court: He is not employed in any way?

Mrs. Davidson: He is a senior there.

The Court: And what duties do you do at the house or the home?

Mrs. Davidson: Well I just keep house.

The Court: What does that include? Are there any servants there?

Mrs. Davidson: No.

The Court: Do you do the cleaning work?

Mrs. Davidson: Yes, just keeping house. I do the

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cooking.

The Court: Do you do the cooking?

Mrs. Davidson: My mother and I.

94 The Court: I thought you said that your mother was incapacitated to some extent?

Mrs. Davidson: Not to where she can't get around, but I mean she had a bad operation here about 3 years ago and she, you know, cannot get around as ably as she could.

The Court: Do you have the management of the house?

Mrs. Davidson: Yes.

The Court: All right. Are there any further questions?

Mr. Brown: No.

Mr. Hogan: No further questions.

The Court: All right. Give us some more jurors.

The Marshsal: Elbert Sutcliffe

Orville Snider

John Day

Thompson Willett

Mrs. Martha Eastes

Mrs. Rose D. Strader

Mrs. J. M. Holmgren

The Court: Now, those of you who just took your seats in the jury box, you have heard my explanation to the other members of the panel the general nature of this case.

Are any one of you related by blood or marriage to the defendant?

95 Is there any one of you who outside of the usual reading of the newspapers who know anything about the facts of this case?

Did any of you take any part or have any connection with it in any way?

Mr. Day: I was in the detective office working on that case when it happened.

The Court: Here in Louisville?

Mr. Day: Yes, sir.

The Court: Did you work on the case?

Mr. Day: We made a run up there.

The Court: I expect you had better be excused.

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The Marshal: Mr. Day will please vacate the box.
Harold Miller.

The Court: Mr. Miller, do you understand what this case is about?

You have heard it explained?

Mr. Miller: Yes, sir.

The Court: Are you related in any way to the defendant?

Mr. Miller: No, sir.

The Court: Now do you, or any one of the other members of the panel know anything about this case or have any connection with it in any way other than a casual reading of the newspapers?

96 Have any one of you any formed or fixed opinion in this case in any way or the other from whatever reading or conversation you may have had?

Is there any reason why any one of you cannot sit on the jury in this case and render a fair and impartial verdict from the evidence and the law as given to you by the Court?

Mr. Miller: You asked about a fixed opinion?

The Court: Yes.

Mr. Miller: I have an opinion. I know about it from reading in the papers.

The Court: Well, by fixed opinion I mean an opinion which would not change upon considering fairly and impartially the law and the evidence which you hear in this case.

Mr. Miller: That would govern my decision.

The Court: We usually have an opinion about the things we read, but we have an open mind still. The question is are you willing to listen freely and fairly to the evidence and are you able to render a fair opinion in this case, irrespective of what your opinion may have been formerly?

Mr. Miller: Yes, sir.

Mr. Brown: Mr. Sutcliffe, could you under the law as given to you by the Court, and if the facts as testified
97 to from the witness stand justified it, would you be willing to vote for a death penalty for this defendant?

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Mr. Sutcliffe: Yes, sir.

Mr. Brown: Mr. Snider, under the law as given by the Court, and if the facts as testified to from the witness stand justified it, would you be willing to vote for the imposition of the death penalty against this defendant?

Mr. Snider: Yes, sir.

Mr. Brown: Mr. Miller, under the law given to you by the Court, and if the facts as testified to from the witness stand justified it, could you recommend the death penalty against this defendant?

Mr. Miller: Yes, sir.

Mr. Brown: Mr. Willett, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you recommend the death penalty for the defendant?

Mr. Willett: Yes, sir.

Mr. Brown: Mrs. Eastes, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you recommend the death penalty for the defendant?

Mrs. Eastes: Yes, sir.

Mr. Brown: Mrs. Strader, under the law as given to you by the Court, and if the facts as testified to from
98 the witness stand justified it, could you recommend the death penalty against this defendant?

Mrs. Strader: I don't believe in capital punishment.

The Court: You mean, then, Mrs. Strader, that you would have difficulty in overcoming those scruples even if the facts and the law justified it?

Mrs. Strader: Judge Miller, I have never been favorable to capital punishment.

The Court: It is not a question of whether you have ever been favorable to capital punishment. We go further than that. Would it be against your conscientious scruples to do that?

Mrs. Strader: I couldn't say I would.

The Court: All right, you may be excused.

The Marshal: Mrs. Strader, vacate the box. Mr. J. Wallace Van Cleave.

The Court: Mr. Van Cleave, you heard me explain

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this case to the other members of the jury?

Mr. Van Cleave: Yes, sir.

The Court: Are you related by blood or marriage to the defendant?

Mr. Van Cleave: No, sir.

The Court: Do you know anything about the facts in the case or have you had any connection with the case
99 in any way other than a casual reading of the newspapers that you have or may have read?

Mr. Van Cleave: No, sir.

The Court: Do you have a fixed opinion about this case in any way?

Mr. Van Cleave: No, sir.

The Court: Do you have a free and open mind as to what the verdict should be upon the law and the evidence as presented in this case?

Mr. Van Cleave: Yes, sir.

The Court: Is there any reason why you could not sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Van Cleave: No.

Mr. Brown: Mr. Van Cleave, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you vote for the imposition of the death penalty against this defendant?

Mr. Van Cleave: I could.

Mr. Brown: Mrs. Holmgren, under the law as given to you by the Court, and if the facts as testified to from the witness stand justified it, could you vote for the imposition of the death penalty against this defendant?

Mrs. Holmgren: Yes, I could.

Mr. Brown: I pass them to you.

100 Mr. Hogan: Mr. Sutcliffe, where do you live?

Mr. Sutcliffe: Harrods Creek.

Mr. Hogan: What is your middle name?

Mr. Sutcliffe: Geary.

Mr. Hogan: Does that name Geary have any particularly significance?

Mr. Sutcliffe: Do you mean is it a family name?

Mr. Hogan: Yes?

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Mr. Sutcliffe: Geary, Indiana.

Mr. Hogan: I believe your grandfather was a steel manufacturer, was he not?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: What is your business?

Mr. Sutcliffe: Manufacturer.

Mr. Hogan: Where is it located?

Mr. Sutcliffe: 3008 Magazine.

Mr. Hogan: What do you manufacture?

Mr. Sutcliffe: Electrical equipment.

Mr. Hogan: How long—are you affiliated with any religious denomination?

Mr. Sutcliffe: Presbyterian.

Mr. Hogan: Are you an officer or a director of any bank in the city?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Which one?

101 Mr. Sutcliffe: Director First National Bank.

Mr. Hogan: Would you classify yourself as a capitalist? In addition to being that of a manufacturer?

Mr. Sutcliffe: I would not.

Mr. Hogan: Have you always been a resident of Louisville?

Mr. Sutcliffe: No, I lived in Chicago up until 9 years ago.

Mr. Hogan: Mr. Snider, where is your home?

Mr. Snider: Taylorsville, Kentucky—Spencer County.

Mr. Hogan: What is your business?

Mr. Snider: Farmer.

Mr. Hogan: Are you affiliated with any religious denomination?

Mr. Snider: I am a Baptist.

Mr. Hogan: Have you ever held any public office in Spencer County or in any other county?

Mr. Snider: No, sir.

Mr. Hogan: You have been a farmer all your life. Is that right?

Mr. Snider: Yes, sir.

Mr. Hogan: Mr. Miller, what is your business?

Mr. Miller: I am in the real estate business.

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Mr. Hogan: Do you operate the Miller Finance Company?

Mr. Miller: Yes.

102 Mr. Hogan: And the Will B. Miller Company?

Mr. Miller: That is right.

Mr. Hogan: And you were formerly a member of the Board of Aldermen in the City of Louisville?

Mr. Miller: I still am for two more days—until December 1st.

Mr. Hogan: Well I read where they had had their last meeting. Are you affiliated with any religious denomination?

Mr. Miller: Episcopalian.

Mr. Hogan: Where do you live?

Mr. Miller: 35 Hill Road—Castlewood.

Mr. Hogan: That is all for the present.

Now, Mr. Willett, you live around Bardstown?

Mr. Willett: I live in Bardstown.

Mr. Hogan: What is your business?

Mr. Willett: I am a distiller.

Mr. Hogan: What is the name of your distillery?

Mr. Willett: The Willett Distillery—I am president there.

Mr. Hogan: Are you affiliated with any religious denomination?

Mr. Willett: I am a Catholic.

Mr. Hogan: Do you have any other business?

Mr. Willett: Well, we have a 400-acre farm and we raise livestock and hogs and cattle and farm pretty
103 intensively for that acreage.

Mr. Hogan: When you say 'we' to whom do you refer?

Mr. Willett: My family—my father and my brothers of us who are at home, and the members of the family who are at home.

Mr. Hogan: Mrs. Eastes, where do you live?

Mrs. Eastes: 132 Carlisle Avenue—that is in Crescent Hill.

Mr. Hogan: Are you affiliated with any religious denomination?

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Mrs. Eastes: Methodist.

Mr. Hogan: What is your husband's business?

Mrs. Eastes: For 15 years he was with the Kentucky Title Trust Company and First National Bank; and for the past six months he has been general accountant at the Mengel Aircraft Division, and on December 15th he takes his physical examination for the Army.

Mr. Hogan: You are about to lose him into the military service, I believe?

Mrs. Eastes: It looks that way.

Mr. Hogan: Mrs. Holmgren?

Mrs. Holmgren: Yes!

Mr. Hogan: Where do you live?

Mrs. Holmgren: Cherokee Parkway.

Mr. Hogan: With what religious denomination
104 are you affiliated?

Mrs. Holmgren: Baptist.

Mr. Hogan: What is your husband's business?

Mrs. Holmgren: He is a State Agent for the St. Paul Fire and Marine Insurance Company.

105 Mr. Hogan: Mr. Van Cleave, do you live on the Judge Churchill Humphrey property.

Mr. Van Cleave: No, I have moved from there.

Mr. Hogan: You formerly did live there?

Mr. Van Cleave: Yes, sir.

Mr. Hogan: What is your business?

Mr. Van Cleave: I am manager of Rhodes-Burford furniture store.

Mr. Hogan: I believe you are the manager of that, are you not?

Mr. Van Cleave: General manager.

Mr. Hogan: Where do you live now?

Mr. Van Cleave: Westport Road.

Mr. Hogan: You have always lived in Jefferson County, have you.

Mr. Van Cleave: No. I was born and raised in St. Louis.

Mr. Hogan: How long have you been around Louisville?

Mr. Van Cleave: Since January of 1938.

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Mr. Hogan: I am addressing my remarks to you seven who have just been called into the box. Have any of you served upon a jury in this court or in the Jefferson Circuit Court within the past twelve months?

I take it by your silence that you have not.

By Juror: You mean prior to two weeks ago?

106 The Court: With the exception of service in this court since the first of October.

By Juror: No.

Mr. Hogan: Are any of you seven related by the ties of blood or marriage to Mrs. Alice Speed Stoll, William S. Stoll, Mrs. Virginia Speed, J. B. Speed, Mrs. Hattie Bishop Speed, or to any member of the Stoll, Sackett or Speed families?

Do any of you know Mr. Eli Brown who sits at counsel table?

Mr. Van Cleave: Yes, I know.

Mr. Hogan: Mr. Sutcliffe and Mr. Van Cleave. What is the nature and extent of that acquaintanceship, Mr. Van Cleave?

Mr. Van Cleave: I met him socially.

Mr. Hogan: Are you a member of any club or fraternity of which he is a member?

The Court: Just a minute, Mr. Hogan. I believe we overlooked that these seven members have not been sworn when they took the box.

The seven jurors were then duly sworn by the court.

The Court: I expect you better make the general statement to them, Mr. Hogan, about the previous questions.

Mr. Hogan: If I should repeat now the questions that

I formerly asked you before you were sworn, would
107 your answers to those questions be the same?

Mr. Sutcliffe: With the exception that I have lived here two years longer.

Mr. Hogan: You previously reported you had been here about eight years, did you not?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Now you have determined that it is ten years?

Mr. Sutcliffe: Eleven.

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Mr. Hogan: Mr. Van Cleave, how do you know Mr. Brown socially?

Mr. Van Cleave: I just met Mr. Brown around at parties. I don't know him very well.

Mr. Hogan: You have had social contacts with Mr. and Mrs. Brown?

Mr. Van Cleave: Yes.

Mr. Hogan: On frequent occasions?

Mr. Van Cleave: No.

Mr. Hogan: Would the fact that you have had social contacts with him and his wife influence your decision in this case in which he is the prosecuting attorney?

Mr. Van Cleave: No.

Mr. Hogan: Mr. Sutcliffe, what is the nature and extent of your acquaintance with Mr. Brown?

Mr. Sutcliffe: I think my answer would be identical with Mr. Van Cleave's. I met him socially.

Mr. Hogan: Would that fact influence your verdict in this case in which he is prosecuting the case?

Mr. Van Cleave: No, sir.

Mr. Hogan: Are any of you acquainted with Mr. Dudley Inman who sits to the right of Mr. Brown?

Mr. Beavin: Yes, I have met the gentleman.

Mr. Hogan: Mr. Beavin, what is the extent and nature of that acquaintanceship?

Mr. Beavin: I have just known him that long.

Mr. Hogan: How long have you known him?

Mr. Beavin: I met him the last time I was on the Grand Jury. That's been three or four years ago.

Mr. Hogan: Grand Jury in this court?

Mr. Beavin: Yes, sir.

Mr. Hogan: Have you been called to Grand Jury service in this court on some occasions?

Mr. Beavin: Yes.

Mr. Hogan: How many times?

Mr. Beavin: Once.

Mr. Hogan: That was three years ago?

Mr. Beavin: Three or four years ago.

Mr. Hogan: Just the one occasion?

Mr. Beavin: Yes, sir.

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Mr. Hogan: Now, you seven again—are you or
 109 any member of your family or household a member,
 stockholder or director of any business firm or corporation
 which now does or has in the past done business with
 the United States or any of its branches, agencies, corporations,
 including any defense or war plant under control, lease,
 supervision or operated in furtherance of the war effort or
 home defense effort?

Mrs. Eastes: My husband is with Mengel Aircraft
 Division, and they are supervised by the Government. I
 don't guess they are now because the contract has been
 cancelled, but it is with the Government.

Mr. Hogan: Now he is—

Mrs. Eastes: (Interrupting): He is general accountant
 of the Mengel Aircraft Division.

Mr. Hogan: He handles, in other words, all accounts
 of the Mengel Aircraft Division?

Mrs. Eastes: Just whatever a general accountant does.
 I don't know all he does.

Mr. Hogan: The Mengel Company does considerable
 business with the Government, does it not?

Mrs. Eastes: Well, the Aircraft Division is under the
 supervision of the Government, just like Curtiss-Wright
 or any other manufacturer that's producing something for
 the Army.

Mr. Hogan: In other words, your husband is
 110 under the supervision of the Government then, is that
 correct?

Mrs. Eastes: Well, I would imagine so.

Mr. Hogan: Now, would that fact influence your
 decision in this case?

Mrs. Eastes: I don't think that has any connection
 with the case as far as I am concerned.

Mr. Hogan: That's what we want to determine, Mrs.
 Eastes, whether as to you it would have any bearing or
 influence.

Mrs. Eastes: No.

Mr. Hogan: Mr. Miller, you had your hand up.

Mr. Miller: My company builds defense housing under
 the War Production Board, under the Federal Housing

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Commission.

Mr. Hogan: Is that group of houses on Phillip's Lane?

Mr. Miller: At the present time they are in Audubon Park.

Mr. Hogan: Mr. Willett?

Mr. Willett: We are, just as all the other distilleries, under contract with the Government to produce alcohol, and have been doing that exclusively for more than a year. Of course, the whole procedure is under the absolute control and supervision of the various bureaus and departments of the Government.

111 Mr. Hogan: So you, yourself, are under the supervision and control of the Government?

Mr. Willett: Completely. Of course, the distilling industry is always under the supervision of the Internal Revenue Department.

Mr. Hogan: That is as to revenue only.

Mr. Willett: Yes, sir.

Mr. Hogan: But now, since you are making alcohol for war purposes, that situation has changed and you are under the domination or supervision and control of the Government.

Mr. Willett: Yes. All of the distilleries are.

Mr. Hogan: Certainly yourself.

Mr. Willett: Yes, sir.

Mr. Hogan: And what office do you hold with that distillery?

Mr. Willett: I am the president, distiller and general manager.

Mr. Hogan: You are the distillery itself, in other words.

Mr. Willett: To a great extent, yes. It is a small company, but we mash three hundred barrels. Of course, we have other help, and do have other help. Two of my brothers who were with me before the war started are now pilots in the Army, so I am pretty busy.

112 Mr. Hogan: Mr. Sutcliffe, you had your hand up.

Mr. Sutcliffe: Yes. Our company has war contracts with both the Army and the Navy.

Mr. Hogan: What position do you hold with the com-

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pany?

Mr. Sutcliffe: Vice President.

Mr. Hogan: What is the name of that company, again?

Mr. Sutcliffe: Louisville Electric Manufacturing Company.

Mr. Hogan: Do you sell your manufactured products direct to the Government?

Mr. Sutcliffe: We do in some instances and in some instances we are sub-contractors.

Mr. Hogan: Does the Government supervise the manufacturing of those articles which they purchase from you?

Mr. Sutcliffe: Only by inspection.

Mr. Hogan: Do they have a man stationed in your plant?

Mr. Sutcliffe: They do not.

Mr. Hogan: What do you mean, then, by inspection, Mr. Sutcliffe?

Mr. Sutcliffe: When the orders are ready for delivery, they are notified and they send inspectors to approve the final product.

Mr. Hogan: They then come into your plant and
113 inspect the finished product then.

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Mr. Willett, I believe you said you had two brothers in the service.

Mr. Willett: I have three brothers in service, two who were formerly associated with me in the operation of the distillery.

Mr. Hogan: Anybody else?

Mrs. Holmgren: I have a brother-in-law in the Army.

Mr. Hogan: We will probably come to that later. We are talking about any contracts or business relationships with the Government. Does your husband have any business relationship with the Government?

Mrs. Holmgren: No.

Mr. Hogan: Do you have any business with the Government?

Mrs. Holmgren: No.

Mr. Hogan: Anybody else of these seven have any

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business relationship with the Government?

Mr. Sutcliffe: Pardon me—I have some relationship with the Triple A.

Mr. Hogan: You are a farmer also, Mr. Sutcliffe?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: Do you participate in the crop cut-out benefits?

114 Mr. Sutcliffe: I do.

Mr. Hogan: You receive from the Government pay as a subsidy or bonus, or whatever you choose to call it, for crops that you do not grow?

Mr. Sutcliffe: Following out the Government's program.

The Court: You are not a member of any AAA committee?

Mr. Sutcliffe: No, sir.

Mr. Hogan: How many acres do you have, Mr. Sutcliffe?

Mr. Sutcliffe: 430.

Mr. Hogan: Now Mr. Snider.

Mr. Snider: I am a farmer, and I, of course, receive a conservation check too.

Mr. Hogan: How many acres do you have?

Mr. Snider: 320.

Mr. Hogan: You get that check from the Government, of course.

Mr. Snider: Yes, sir.

Mr. Hogan: Mr. Miller, have you completed all of your construction or are you still doing business with the Government?

Mr. Miller: We are still doing business with the Government.

Mr. Hogan: How many houses do you have under
115 process of construction?

Mr. Miller: About fifty.

Mr. Hogan: Would you mind explaining in a general way just how that business tie-up with the Government exists with you?

Mr. Miller: Well, this is a defense housing project in which we agree to construct the houses and rent them

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to people in defense work. In other words, they have to be rented to people in defense work. Then we receive priority from the War Production Board and they are financed through the Federal Housing Administration loan.

Mr. Hogan: Now, as to you seven again—are you acquainted with any member of the Speed, Sackett or Stoll families?

I will take Mrs. Eastes first.

Mrs. Eastes: I know Mrs. George Stoll and I know Miss Martha Jean, their daughter. We work together at Wesley Community House.

Mr. Hogan: And you work together with what member of the Stoll family at the Wesley Community House?

Mrs. Eastes: Martha Jean has done counsellor work out at Lake Louisvilla Camp. I am camp chairman of the House Committee so I have been in contact with her out at the Wesley Community Camp.

Mr. Hogan: Who is Martha Jean Stoll?

116 Mrs. Eastes: She is George Stoll's daughter, and the Stoll Oil Company have given us all the kerosene there that we use in our stoves for a number of years. I haven't had any contact other than just being given the oil. I don't know them, don't know the Stoll brother, but I know Martha Jean whose father is Mr. George Stoll.

Mr. Hogan: And Mr. George Stoll is an officer of the Stoll Company?

Mrs. Eastes: Yes, and they give us our kerosene that we use at camp.

Mr. Hogan: With what religious denomination are the Stolls affiliated?

Mrs. Eastes: Well, I think they are Methodists. I couldn't say for sure.

Mr. Hogan: You are a Methodist yourself?

Mrs. Eastes: Yes, sir.

Mr. Hogan: Do you attend the same church as any member of the Stoll family?

Mrs. Eastes: No; I attend the Crescent Hill Methodist Church, but they don't attend.

Mr. Hogan: Where is this Wesley House you speak of?

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Mrs. Eastes: Wesley Community House is a settlement that the Methodist Church with the help of the Community chest runs, and it is at Shelby and Washington, and

I am on the Board at Wesley House and so is Mrs. 117 George Stoll, and I am camp chairman and Martha Jean has been one of our counsellors at camp for three or four years.

Mr. Hogan: I take it from that connection then, Mrs. Eastes, you would be embarrassed by sitting on a jury in which members of the jury would be called upon to decide—

Mrs. Eastes (Interrupting): Well, I don't know them that well. I mean that I just know them. I had to look into all the counsellors at camp, their character and that sort of thing, who are counsellors to our girls. I don't know her other than just to speak to her. I mean, as far as that is concerned, I feel I could sit on a jury and take the evidence that is given in the case and judge from that, and what acquaintance I have with her would not have any effect on my verdict on the jury.

Mr. Hogan: All things being equal, would you hesitate to decide in favor of the defendant and against the Stoll family?

Mrs. Eastes: Certainly not, not if the evidence given on the stand was in his favor. My acquaintance with the Stolls would not have any effect on my verdict.

Mr. Hogan: You wouldn't let that affect your verdict?

Mrs. Eastes: We are not that close friends. I have just had the acquaintance I have told you about. I know Martha Jean to speak to, as I told you. Other than that, I don't know the Stolls.

118 Mr. Hogan: But you do know Mrs. George Stoll because she is on the Board of Directors.

Mr. Hogan: Well, I know—I would know her if I would see her, of course, because we have been on the board together, but as far as being friends, I speak to a lot of people, I know them when I see them, but that's all.

Mr. Hogan: Now, Mr. Willett, did you have some answer to make to that?

Mr. Willett: I have a casual acquaintance with Mr.

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Evarts Speed, Jr., who was here this morning and was excused from duty. I knew him from 1933 until 1936 when I had a position with the Bernheim Distilling Company, Louisville, sold us a good deal of building material at that time.

Mr. Hogan: Would that fact, Mr. Willett, influence your decision?

Mr. Willett: No, sir.

Mr. Hogan: Mr. Miller.

Mr. Miller: Your question is knowing the Stolls?

Mr. Hogan: That is correct.

Mr. Miller: Of course, I know all four of the Stoll boys.

Mr. Hogan: It is knowing the Stolls and the Speeds.

Mr. Miller: And I know Mr. and Mrs. Speed.

Mr. Hogan: You know them socially, civily?

119 Mr. Miller: I have been in Mr. and Mrs. Speed's house to dinner, that is, Mr. and Mrs. Will Speed.

Mr. Hogan: The mother of Mrs. Alice Stoll?

Mr. Miller: Yes. I belong to two clubs that Mr. Berry Stoll belongs to.

Mr. Hogan: What are those?

Mr. Miller: Country clubs.

Mr. Hogan: You believe that you could sit on this jury, considering the fact that Mrs. Alice Stoll, the wife of Mr. Berry Stoll, will most likely be the chief complaining witness, and render a fair and impartial verdict, or would you be embarrassed to do so?

Mr. Miller: I could render a fair and impartial verdict.

Mr. Hogan: Considering that connection, socially and otherwise?

Mr. Miller: Yes.

Mr. Hogan: You hesitate to say that a little bit, Mr. Miller. I would like to see now just how you feel about that?

Mr. Miller: Well, I may be a little bit prejudiced at the present moment, but I am sure that I could treat the facts as they develop, as the trial proceeds.

Mr. Hogan: As it now stands, you are now prejudiced in favor of those families with which you have had

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120 the social connections?

Mr. Miller: Well, not because of the social connections.

Mr. Hogan: But you do have a prejudice there.

Mr. Miller: Yes.

The Court: Is it a prejudice or an opinion, Mr. Miller?

Mr. Miller: It is an opinion, I would say, not—

Mr. Hogan (Interrupting): Well, it is an opinion that almost amounts to a prejudice, is it not, Mr. Miller?

Mr. Miller: I don't know a great deal about the facts, but I don't see how anybody that knew about it or knew anything about the case couldn't in their mind be prejudiced to a certain extent. I mean, the fact is not being denied that Mrs. Stoll was kidnaped.

The Court: Yes, every fact in the indictment is denied by the plea of "Not guilty."

Mr. Miller: That's a very evident fact even though it is denied.

Mr. Hogan: You believe that it is a fact.

Mr. Miller: I sure do.

• Mr. Hogan: I believe he is not qualified, Judge.

The Court: All right, you may be excused.

Mr. Snider: You were asking about the Speed relation. There is a family of Speeds in our town that
121 I understand is related to these people, but I don't know that.

Mr. Hogan: You don't know any Speeds or any Stolls?

Mr. Snider: I know the Speeds in our town.

Mr. Hogan: I mean the Louisville Speeds.

Mr. Snider: No.

The Marshal: Mrs. Eugenia Matthews.

Mrs. Matthews was thereupon duly sworn by the Clerk.

The Court: Mrs. Matthews, you have heard me explain to the other members of the Jury panel what the case is about. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Matthews: No, sir.

The Court: Other than what you may have casually read in the newspapers, do you know anything about the facts of this case or had any connection with the facts of

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this case in any way?

Mrs. Matthews: Judge Miller, I listened to some of the evidence at the Robinson trial.

The Court: You mean the trial of Mrs. Frances Robinson and Thomas Henry Robinson, Sr.?

Mrs. Matthews: Yes.

The Court: I guess that would disqualify you. You may step down.

The Marshal: Mrs. Della Pruitt.

Mrs. Della Pruitt was then duly sworn by the Clerk.

122 The Court: You have heard me state to the members of the Jury panel what this case is about. Have you had any connection in any way with Thomas Henry Robinson, Jr. or with any member of his family?

Mrs. Pruitt: No.

The Court: Do you know him?

Mrs. Pruitt: No.

The Court: Do you know anything about the facts of this case other than what you may have read in the newspapers?

Mrs. Pruitt: No.

The Court: Now, do you have any fixed opinion in this case one way or the other as to guilt or innocence of this defendant?

Mrs. Pruitt: No.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mrs. Pruitt: No.

The Court: Mr. Brown.

Mr. Brown: Mrs. Pruitt, if the law as given to you by the Court and the facts as testified to from the witness-stand justify it, would you recommend a death penalty for this defendant?

Mrs. Pruitt: Yes.

123 Mr. Hogan: I believe you are a school teacher, are you not?

Mrs. Pruitt: No, housewife.

Mr. Hogan: Housewife?

Mrs. Pruitt: Yes.

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Mr. Hogan: What is the business of your husband?

Mrs. Pruitt: He is manager of the Beecher Terrace Project.

Mr. Hogan: That's on Jefferson near Fourteenth Street, is it not? Twelfth to Fourteenth on Jefferson?

Mrs. Pruitt: From Ninth to Thirteenth on Jefferson and Walnut.

Mr. Hogan: Who is your husband's employer? Who pays him?

Mrs. Pruitt: He is paid by the Louisville Housing Administration.

Mr. Hogan: Mr. Dosker?

Mrs. Pruitt: That's right.

Mr. Hogan: That's a Government project?

Mrs. Pruitt: That's right.

Mr. Hogan: Does that check come from the Treasurer of the United States?

Mrs. Pruitt: I couldn't say.

Mr. Hogan: But he is paid by the Government?

Mrs. Pruitt: Yes.

124 Mr. Hogan: Have you read any newspaper account of the matters alleged in this indictment?

Mrs. Pruitt: Yes, I have read what appeared in the paper November 21st.

Mr. Hogan: That is, in this magazine section here?

Mrs. Pruitt: That's right.

Mr. Hogan: That is, November 21st, 1943?

Mrs. Pruitt: Yes.

Mr. Hogan: Appearing in the Roto-Magazine Section of the Louisville Courier-Journal?

Mrs. Pruitt: Yes.

Mr. Hogan: Did you form any opinion as to the guilt or innocence of this defendant after you had read that?

Mrs. Pruitt: No.

Mr. Hogan: Have you heard anybody else express their opinion as to the guilt or innocence of this defendant?

Mrs. Pruitt: No.

Mr. Hogan: Have you any prejudice against this defendant?

Mrs. Pruitt: No.

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Mr. Hogan: Have you ever been employed by any member of the Stoll or Speed families?

Mrs. Pruitt: No.

Mr. Hogan: Or the Sackett family?

Mrs. Pruitt: No.

Mr. Hogan: Do you know any members of those families?

125 Mrs. Pruitt: No.

Mr. Hogan: With what religious denomination are you affiliated?

Mrs. Pruitt: Catholic.

Mr. Hogan: I didn't understand you.

Mrs. Pruitt: Catholic.

Mr. Hogan: Have you always been a housewife or have you at some time or other been employed?

Mrs. Pruitt: I was employed fourteen or fifteen years ago, as a doctor's maid in a doctor's office.

Mr. Hogan: What doctor, may I ask?

Mrs. Pruitt: Dr. Johanbocke. There were twelve in the office.

Mr. Hogan: You say there were twelve in that same office. Just a few more, please.

Mrs. Pruitt: Dr. Henry—the late Dr. Henry Manly.

Mr. Hogan: One or two more.

Mrs. Pruitt: Dr. Pectol.

Mr. Hogan: Who else?

Mrs. Pruitt: The late Dr. Ogden.

Mr. Hogan: Who else, as long as you are going along?

Mrs. Pruitt: The late Dr. McDaniel.

Mr. Hogan: I think that's enough. Did any of those doctors ever treat or wait on any members of the
126 Speed or Stoll families?

Mrs. Pruitt: Not that I know of.

Mr. Hogan: Does there exist in you such a state of mind in regard to this case or to this defendant that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

Mrs. Pruitt: No.

Mr. Hogan: Have you heard any rumors about this case?

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Mrs. Pruitt: No.

Mr. Hogan: Have you served upon a jury in the Jefferson Circuit Court or in this court within the past twelve months?

Mrs. Pruitt: No.

Mr. Hogan: Do you or your husband now, or have you ever received a bonus or salary, soldier or sailor's allotment, or benefit of any kind from the United States Government?

Mrs. Pruitt: No.

Mr. Hogan: Do you entertain in your mind any prejudice against one charged with a crime who interposes a plea of insanity as a defense?

Mrs. Pruitt: No.

Mr. Hogan: Would you have any prejudice in your mind, if it be shown that prior to the time mentioned
127 in the indictment that the defendant was insane but that later he was restored to his sanity?

Mrs. Pruitt: No.

Mr. Hogan: If you should, after hearing the evidence and the law, entertain a reasonable doubt either as to the legal capacity of this defendant to commit the acts charged in the indictment or any of them, or entertain a reasonable doubt as to his guilt, would you resolve that doubt in favor of the defendant and render a verdict of acquittal?

Mrs. Pruitt: Yes.

Mr. Hogan: Have you ever sat upon any jury or tribunal which either recommended or imposed the death penalty?

Mrs. Pruitt: No.

Mr. Hogan: Do you believe that because the defendant has been indicted that that is some evidence of his guilt or would the fact that he has been indicted create in your mind a suspicion, prejudice or bias that he may be guilty?

Mrs. Pruitt: No, sir.

Mr. Hogan: Now, going back to the six of you where I left off, I will continue with my further questioning—that is, Mrs. Eastes, Mr. Van Cleave, Mr. Sutcliffe, Mr. Snider, Mrs. Holmgren and Mr. Willett.

Are you now, or have you ever been, or any

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128 member of your family or household been, employed by the Byrne & Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, or any business operated by the Speed, Sackett or Stoll families?

I take it by your silence that you have not.

Mr. Sutcliffe: Mr. Hogan, my hand was raised when you asked the question whether any of the jurors were acquainted with either the Speed or Stoll families. I don't know whether you saw my hand or not.

Mr. Hogan: I did not, Mr. Sutcliffe. You say that you do know some of the Speed, Stoll and Sackett families?

Mr. Sutcliffe: Yes, sir.

Mr. Hogan: What is the nature and extent of that acquaintance, Mr. Sutcliffe?

Mr. Sutcliffe: Friendly acquaintanceship without being intimate.

Mr. Hogan: Is it born of some social contact?

Mr. Sutcliffe: Yes.

Mr. Hogan: Would you mind telling the court what that is?

Mr. Sutcliffe: Meeting on occasions at social events or in the homes or clubs, exchanging dinner invitations.

Mr. Hogan: You have a rather close social contact with those families?

Mr. Sutcliffe: I wouldn't say that.

Mr. Hogan: Well, close enough that you have them in your home and they have you in their home?

Mr. Sutcliffe: No.

Mr. Hogan: You have been at gatherings, dinners and parties, at which members of the parties would be present?

Mr. Sutcliffe: Large gatherings.

Mr. Hogan: Would that have any influence on your decision in this case?

Mr. Sutcliffe: No.

Mr. Hogan: Do you think that you could sit upon this jury and after hearing the evidence render a fair and impartial verdict?

Mr. Sutcliffe: Yes, sir.

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Mr. Van Cleave: My hand was also raised. I know Mr. Berry Stoll. I am a member of the Wynn Stay Club and he is also. We have lunch together very often.

Mr. Hogan: You say you have lunch there quite often?

Mr. Van Cleave: Yes.

Mr. Hogan: And Mr. Berry Stoll does likewise, I take it?

Mr. Van Cleave: Yes, one big table.

Mr. Hogan: You lunch at a round or long table?

Mr. Van Cleave: Yes.

Mr. Hogan: You have grown to like Mr. Stoll and
130 vice versa?

Mr. Van Cleave: Yes.

Mr. Hogan: I take it then, that you would have some hesitancy about finding a verdict of not guilty in this case in which his wife is to be the chief complaining witness?

Mr. Van Cleave: No, I don't think so.

Mr. Hogan: You don't think that that would influence your decision then?

Mr. Van Cleave: I don't know Mrs. Stoll at all. I was not in Louisville at the time this happened. I just met Mr. Stoll.

Mr. Hogan: But you do know her husband quite well?

Mr. Van Cleave: Yes.

Mr. Hogan: Now, that would have some influence on your decision?

Mr. Van Cleave: Possibly it would.

Mr. Hogan: And do you now have some prejudice in favor of him and his wife against this defendant?

Mr. Van Cleave: I just don't know enough about the case. I haven't read anything about it and I wasn't here when it happened.

Mr. Hogan: Has anybody ever talked to you about it?

Mr. Van Cleave: I heard a lot of gossip about it.

Mr. Hogan: Did you talk to those people that
131 were gossiping?

Mr. Van Cleave: No. Every story I heard about it was so entirely different that I don't know how—

Mr. Hogan: How did that information affect you, formulate in your mind some fixed opinion about this case?

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Mr. Van Cleave: No. It was just another story. I don't know anything about it.

Mr. Hogan: Well, it made some impression upon your mind, did it not, Mr. Van Cleave?

Mr. Van Cleave: Well, so did the de Marigny trial.

Mr. Hogan: What trial was that?

Mr. Van Cleave: The trial they just got through in Nassau, the de Marigny trial. Just any trial that's news.

Mr. Hogan: With whom have you discussed this case?

Mr. Van Cleave: I don't know that I could even say. Ever since I have been in Louisville I have heard something about it.

Mr. Hogan: Did you discuss it at the Wynn Stay Club?

Mr. Van Cleave: No, I never heard it discussed there.

Mr. Hogan: Did you discuss it with Mr. Berry Stoll?

Mr. Van Cleave: No, sir.

Mr. Hogan: What is that?

Mr. Van Cleave: No, sir.

132 Mr. Hogan: Did you discuss it with any member of the Wynn Stay Club?

Mr. Van Cleave: No, I never heard anyone ever discuss it there.

Mr. Hogan: Did you discuss it with Mr. Brown, with whom you had social contact?

Mr. Van Cleave: No.

Mr. Hogan: With whom have you discussed it, Mr. Van Cleave?

Mr. Van Cleave: Well, various friends of mine. People I visit and know might have said something about it.

Mr. Hogan: Did they have a fixed opinion about this case?

Mr. Van Cleave: No. They just read the newspapers and told me. I wasn't here when it happened.

Mr. Hogan: They gave you some idea as to what their opinion was, did they not?

Mr. Van Cleave: Yes.

Mr. Hogan: And that made some impression upon you?

Mr. Van Cleave: Yes.

Mr. Hogan: And you now are sitting in the jury box with some idea about this case, are you not?

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Mr. Van Cleave: No, just a great deal of curiosity.

Mr. Hogan: Well, apart from curiosity, you have a lot of information that has been conveyed to you
133 through gossip and information, have you not?

Mr. Van Cleave: I say I have no information of any kind, just gossip. Nobody ever said anything to me about it that knew anything about it.

Mr. Hogan: How do you distinguish between gossip and information?

Mr. Van Cleave: Well, gossip is somebody's idea of what it might be.

Mr. Hogan: Regardless of whether it is true or untrue.

Mr. Van Cleave: Yes.

Mr. Hogan: Your source of conversation has been generally and largely from gossip, is that correct?

Mr. Van Cleave: That's right.

Mr. Hogan: And, as you have stated a moment ago, has made some impression upon you.

Mr. Van Cleave: That's the only information I had of any kind.

Mr. Hogan: You said you didn't have information, that you had gossip. Now, do you have information or do you have gossip?

Mr. Van Cleave: Gossip.

Mr. Hogan: From the gossip that you have received, have you a fixed idea in your mind as to this case?

Mr. Van Cleave: No.

134 Mr. Hogan: You have some idea of your own about it, do you not?

Mr. Van Cleave: No, I don't have any idea.

Mr. Hogan: You hesitated when you answered. What is lurking in your mind? You wanted to speak out then. Now, I will ask you to be frank enough to tell me and tell the Court just what you have in your mind about this matter.

Mr. Van Cleave: Well, I don't know—as I say, I don't know anything at all about the case, I was not here when it was in the papers, I did not even see this article that you held up in the Sunday papers. All I have seen in print about it at all is the notice the other day that it was to be

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today, a short article a few days ago about the setting of the trial. When I first came to Louisville I was introduced to Mr. Stoll. I joined the Wynn Stay Club, and every now and then somebody started talking about the Stoll case just like they were showing me around Louisville. I went to see Churchill Downs and various points of interest, and the Stoll case, I heard all the pros and cons and all the stories about it, and I have no idea of what actually happened.

Mr. Hogan: If you were to exchange places with the defendant and you were on trial for your life and liberty, and considering that you have the facts or gossip or information, whatever you term it, would you, Mr. Van
 135 Cleave, turn the situation around, be willing to have Mr. Robinson in your place in the jury box, if you were on trial and in his shoes?

Mr. Van Cleave: If I were in Mr. Robinson's shoes I wouldn't want anyone on the jury that had any speaking acquaintance with Mr. Berry Stoll.

Mr. Hogan: Now, that's what we are getting at. Then, if you were in his shoes, you would feel like that one like yourself who had a speaking acquaintance, certainly a social acquaintance, with Mr. Berry Stoll, could not be an unprejudiced or certainly not a wholly unbiased juror, could he?

Mr. Van Cleave: You are asking me if I were Mr. Robinson?

Mr. Hogan: Yes.

The Court: The question is directed to the juror, how he feels, not how somebody else feels.

Mr. Van Cleave: Well, I have no bias or prejudice in this case, but I do know Mr. Berry Stoll.

Mr. Hogan: Do you entertain some idea at the present time which would resolve itself in favor of Mr. Berry Stoll which would require some strong persuasion to get that leaning out of your mind?

Mr. Van Cleave: No, sir.

Mr. Hogan: Do you say that you come into this
 136 jury box with an open mind as to this case?

Mr. Van Cleave: Yes.

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Mr. Hogan: If, after receiving the evidence and having the law given to you by His Honor, you should then arrive at such a state of mind that you would be on the fence, more or less, as to which way to decide, the fact that you know Mr. Berry Stoll, would that fact influence your decision in favor of the prosecution?

Mr. Van Cleave: Well, I believe we are all instructed all things being equal the defendant gets the break, and I would so vote.

Mr. Hogan: Would you so vote?

Mr. Van Cleave: I would.

Mr. Hogan: And you would completely forget your relationship with Mr. Berry Stoll?

Mr. Van Cleave: Yes.

Mr. Hogan: Do you think you could completely dismiss—

Mr. Brown: Your Honor, he has been over that three or four times.

The Court: I think the inquiry has gone quite far. You are repeating a good deal. If there is anything you have overlooked, ask him, but let's don't go over it again and again. Mr. Van Cleave said two or three times he had an open mind in this case, he heard some stories but
137 he didn't know what was what, and he would vote according to the law and the evidence and the instructions. Now, any other additional facts you want to bring out, go ahead, but don't go back again over the same thing.

Mr. Hogan: I realize that, but this is such an important case from this defendant's standpoint, not only his liberty but his life is at stake, I have gone out of the ordinary—

The Court: I don't mind your asking questions, but let's don't ask any question more than two or three times.

Mr. Hogan: Now, to all six of you—are you employed, or have you been, or have any members of your family or household ever been employed or associated with any partnership, firm or corporation affiliated or associated with the Stoll Oil Refining Company, the Byrne & Speed Coal Company, the Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal

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Company, the Pioneer Coal Company, the Frederick M. Sackett interests, or any other business or venture operated or controlled by the Stoll, Speed or Sackett families?

Have you now, or have you ever had, any business, civic, religious, charitable or social contacts with Mrs. Alice Speed Stoll, Mr. William S. Speed, Mrs. Virginia Speed, Mrs. Hattie Bishop Speed, or J. B. Speed, or **138** members of the Stoll, Speed or Sackett families? I believe Mr. Van Cleave, you answered, and I believe Mr. Sutcliffe has answered, and Mrs. Eastes, I believe you have answered. Do you wish to add anything to your former statements?

Mrs. Eastes: Nothing. The only one I know is Martha Jean. I told you that.

Mr. Hogan: Now, as to the other three of you—Mrs. Holmgren?

Mrs. Holmgren: I know Mrs. Charles Stoll slightly, just have a speaking acquaintance.

Mr. Hogan: The question is whether you have had any civic, religious, charitable or social contacts with those families or members thereof.

Have you or any member of your family or household ever been employed at any of the filling stations of the Stoll Oil Company or in which they have any interests?

I take it by your silence to the questions that your answer is no, in each instance.

Are you or any member of your family or household a stockholder or bondholder or officer in the Stoll Oil Company, the Bryne & Speed Coal Company—

Mr. Brown: We have gone all over that, Your Honor.

Mr. Hogan: I don't believe I have asked about a stockholder or bondholder.

Mr. Brown: All right, I will withdraw the ob- **139** jection.

Mr. Hogan: (Continuing) The Louisville Cement Company, the Speed Portland Cement Company, the Black Star Coal Company, the Pioneer Coal Company, the Fred M. Sackett interests, or any other business or venture operated or controlled by the Speed, Stoll or Sackett fami-

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lies?

Are you six or seven housekeepers?

By Jurors: Yes.

Mr. Hogan: To the six of you—I believe Mr. Van Cleave has answered a lot of questions—does there exist in you such a state of mind in regard to this case or to this defendant that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

I take it that your answer is no, by your silence.

Have you read at any time in the newspapers or magazines an account of the commission of the crime with which the defendant is charged? Anybody else? Mr. Willett, Mrs. Snider, Mr. Sutcliffe, Mrs. Holmgren—you have not, Mrs. Eastes?

Mrs. Eastes: No. I wasn't here when the thing happened, and my husband has studied law and he said if I was on the panel I shouldn't read anything that was in the papers, so I have obeyed and I haven't.

Mr. Hogan: Do you always obey the instruction of your husband?

Mrs. Eastes: All legal advice, but I haven't read
140 anything since the case has come up this time and I was not in the city when it happened, I didn't know anything about it.

Mr. Hogan: To those who held your hand up indicating you had read account or accounts in the newspapers or magazines—do you believe, despite the fact that you may have read something in the newspapers and magazines, that you can render a fair and impartial verdict according to the law and the evidence? Does that go for you, Mr. Sutcliffe?

Mr. Sutcliffe: I feel it is my duty to.

Mr. Hogan: Mr. Snider?

Mr. Snider: Yes.

Mr. Hogan: Anybody else who might have read the newspapers? Mrs. Holmgren?

Mrs. Holmgren: Yes.

Mr. Hogan: Now, have any of you seven formed an opinion or impression based upon rumor or upon news-

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paper or magazine statements about the truth of which you have expressed an opinion? All right, Mr. Sutcliffe.

Mr. Sutcliffe: I discussed it at home with my wife, of course, at the time.

Mr. Hogan: It is a question of whether or not you have formed an opinion or impression based upon rumor or newspaper statements. Mr. Snider.

Mr. Snider: From what I saw of the newspaper, if I knew those were facts in that paper, I would have an opinion.

141 Mr. Hogan: So, Mr. Snider, if what you have read in the newspaper or any part of it were brought out in this trial, you already have an opinion, do you not?

Mr. Snider: Yes, if I was sure, if they were facts. However, I have no way of knowing that is the truth of the matter from reading the paper, but from reading the paper I have an opinion; yes, sir.

Mr. Hogan: Your Honor, please, I don't want to ask him what his opinion is.

The Court: Can you disregard the facts that you have read in the newspaper accounts that you refer to and listen with a free and open mind, an impartial mind, from the facts as you get them from the testimony in this case, and decide the case on the facts from the witnesses, disregarding what you have read in the newspaper heretofore?

Mr. Snider: Sure I can.

Mr. Hogan: But, as matters now stand, you have some opinion in your mind as to the guilt or innocence of this defendant?

The Court: No. He said based on facts which he doesn't know whether they are true or not.

Mr. Snider: I said if that was the facts, if that was testified, I would probably have an opinion. I have got no way of telling what I see in the papers, whether that's facts or not.

142 Mr. Hogan: What I mean, you have already formed an opinion based upon statements in the newspapers.

Mr. Brown: He said he had not.

Mr. Snider: I said if the facts were true. I don't

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know whether they are true or not.

Mr. Hogan: I will ask you this pointed question then, Mr. Snider, if the facts turn out to be true as you have read them in the newspaper, then you do have an opinion about the guilt or innocence of this defendant, do you not?

Mr. Brown: I am going to object to that because they are bound to have an opinion after the facts come in.

The Court: Not that he has an opinion now, but necessarily, after he hears the evidence, as a juror he would have an opinion. He has no way of knowing at the present time whether those facts are true or not.

Mr. Hogan: What opinion do you now entertain about this case, Mr. Snider?

The Court: If you have an opinion.

Mr. Snider: The only knowledge I have of the case at all is what I have seen in the papers, and I explained it to you. That's the only knowledge I have of the case, is what I have read in the paper.

Mr. Hogan: Without knowledge do you have an opinion, or do you have an opinion based on knowledge you have obtained from the newspapers?

143 Mr. Snider: I say, reading an article, I would have an opinion. I have an opinion if those things that I read in this paper were facts backed up by evidence and I knew it was genuine evidence like will be produced here I would have an opinion.

Mr. Hogan: In other words, you say you have to wait and see what the evidence turns out to be, is that it?

Mr. Snider: Yes.

Mr. Hogan: Are any of you six guardians, wards, attorney or client, master or servant, landlord or tenant, employer or employee on wages of a member of the family of Mrs. Alice Speed Stoll or the Speed, Stoll or Sackett families?

Have you ever complained against this defendant in any criminal prosecution or proceeding?

Did any of you six or seven serve on the Grand Jury which returned the indictment in this case?

Were you a member of a former jury sworn to try Thomas H. Robinson, Sr. and Frances Robinson, who were

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jointly indicted in October, 1934?

Are you now, or have you been, or any member of your family or household been, stock or bond holders, office holders or directors of any of the United States Government corporations, associations or agencies, such as the Federal Land Bank, Federal Reserve Bank, the Re-
144 construction Finance Corporation, the AAA, or any of these other alphabetical subdivisions of the United States?

Are you or any member of your household now, or have you or they ever been, employed by the United States, directly or indirectly? Mr. Sutcliffe and Mr. Snider.

Mr. Willett: Will you repeat that question.

Mr. Hogan: Are you now, or have you ever been, or has any member of your family ever been, or are they now employed, directly or indirectly, by the United States Government? Of course, you are, being in the distillery business, Mr. Willett.

Mr. Willett: A brother of mine was a United States engineer for several years, too.

Mr. Hogan: Is he now in that service?

Mr. Willett: No.

Mr. Hogan: You had an answer on the back row.

Mrs. Pruitt: As I said, my husband is employed.

Mr. Hogan: He is employed at the Beecher Terrace?

Mrs. Pruitt: Yes.

Mr. Hogan: Mr. Snider.

Mr. Snider: Does that mean some member of the family that's in the armed services now?

Mr. Hogan: No, we are talking about employment for wages.

Mr. Snider: I have a nephew that's in the Alcohol
145 Tax Unit here on the fourth floor. Is that connected with the Government?

Mr. Hogan: It certainly is a distinct part of it. What is his name?

Mr. Snider: H. D. Snider.

Mr. Hogan: Mrs. Eastes?

Mrs. Eastes: I said before, my husband is with Mengel, but I think the Government pays the payroll. You asked

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the same question.

Mr. Hogan: Your husband, you think, I believe, gets the check directly from the Government?

Mrs. Eastes: He doesn't get it directly from the Government, but they appropriate money for the war plants. The Mengel Company gives the check, but somebody gives Mengel the money.

Mr. Hogan: And you think that somebody is the Government.

Mrs. Eastes: Well, I am pretty sure it is. Indirectly they get it from the Government, I am pretty sure.

Mr. Hogan: Do any of you six or seven receive now, or have you ever received, a pension, salary, bonus, soldier or sailor allotment, benefit or remuneration in any form from the Government?

Mr. Snider: I receive a conservation check from the Government.

146 Mr. Hogan: Mr. Sutcliffe?

Mr. Sutcliffe: I do also, and I received a soldier bonus.

Mr. Hogan: Anybody else?

Mr. Van Cleave: Yes. I used to get a cut-out check.

Mr. Hogan: Are you the owner or operator of a farm, Mr. Van Cleave?

Mr. Van Cleave: I was part owner of a tract of land in Texas. We sold that.

Mr. Hogan: That's what is known as a conservation check or cut-out payment?

Mr. Van Cleave: I suppose so.

Mr. Hogan: Have any of you been, or are you now, a member of any board or commission of the United States, such as the Civil Service, the War Manpower Commission, Transportation Commission, Rationing Board, Labor Board, the Office of Price Administration, Draft Boards or OPA, or any other kind of boards?

Mr. Snider: I am on some kind of board over there, Rationing Board, don't get any pay.

Mr. Hogan: You don't get any pay?

Mr. Snider: No, sir.

Mr. Hogan: That's why you don't know much about

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it, isn't it?

Do you seven now entertain any prejudice against
 147 one charged with a crime who interposes a defense
 of insanity?

In other words, do you think that a person charged
 with a crime, when he interposes a plea of insanity, does
 so for the ostensible purpose of using that as a sham or
 cloak to hide behind the crime?

Do you have, or will you have, in this case, any prejudice
 against one interposing a plea of insanity as a defense
 who it is shown, and will be shown, thereafter made a
 recovery and is restored to sanity?

Have you, or any of you six or seven, formulated any
 opinion as to the guilt or innocence of this defendant?

Mr. Willett: I raised my hand sometime ago when
 you were speaking of opinion and prejudice. I think every-
 body, presumed, until this new thing came up, that he was
 guilty, he was found guilty a number of years ago on
 charges substantially the same as he is meeting today.

The Court: He was not found guilty. He pleaded
 guilty.

Mr. Willett: He pled guilty then. Naturally, the case,
 I think, in the minds of most everybody who knew any-
 thing at all about it, or whoever heard about it, was that
 he was guilty.

Mr. Hogan: And you today think that?

Mr. Willett: I have no opinion except that he was
 found guilty, or pled guilty, rather.

148 Mr. Hogan: From that, as I take it, it naturally
 follows that you have an impression or opinion that
 he must have been guilty or he would not have pleaded
 guilty.

Mr. Willett: That's right. I dismissed it for a num-
 ber of years, forgot all about the case entirely, except, you
 know how things flash in your mind. He was in prison,
 pled guilty, and I dismissed the matter with that thought.

Mr. Hogan: And you come here today, honestly so,
 admitting that you still have that same opinion about his
 guilt.

Mr. Willett: You can't get away from that, that is,

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I can't get away from that, that he pled guilty a number of years ago. Of course, this is an entirely new trial.

Mr. Hogan: But you can't get away from that fact, that he pled guilty.

Mr. Willett: That's right.

Mr. Hogan: That made an indelible impression upon your mind.

Mr. Willett: That's correct.

Mr. Hogan: Judge, I think under those circumstances—

The Court: Mr. Willett, do you mean it made such an impression on your mind that it would enter into your consideration of the case?

Mr. Willett: If new facts come up, Judge, Your Honor, that prove that his position was wrong in pleading guilty.

149 The Court: Well, would that fact be an element in reaching your verdict even though there may be other facts, too?

Mr. Willett: I hardly think so.

The Court: Are you sure that it would not? In other words, you are to try this case, the jury is to try and hear this case, on the facts you get from this witness-stand in this case without consideration of anything that's happened heretofore, and unless you are sure that that fact can be entirely eliminated from your mind, will have no part to play at all in your consideration of this case, then you should not sit as a juror.

Mr. Willett: I will make every effort, I will say that.

The Court: That is not quite enough. You think you can or cannot?

Mr. Willett: I think I can. I can, I say.

Mr. Hogan: But you come into this box, Mr. Willett, laboring under an opinion that will have to be overcome in your mind.

Mr. Willett: Yes.

Mr. Hogan: Judge—

The Court: I don't know that you have put the case correctly to him. He says one way when he answers my questions, and then you get him to say another way
150 when he answers yours.

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Mr. Hogan: Judge, I submit that what he means to say is that we would have to overcome in his mind the fixed idea that this man is guilty.

The Court: Is that your situation, Mr. Willett?

Mr. Willett: I want to answer both of you the same way, Judge, but I do say that I dismissed—I didn't take a great deal of interest in the case when it was previously tried, but I dismissed the matter with the thought that he pled guilty and was serving a sentence. Naturally, that thought is still in my mind.

The Court: The point I am trying to bring out is this, of course, people read the newspapers, they do get general impressions about things without knowing the full facts, what we are trying to reach in this case is a verdict on the evidence which we have here, disregarding entirely what has gone before. That case has been thrown out as not being a valid trial, a valid case. If it is going to take evidence to forget that opinion, in other words, if that's an element that's already in your mind and will be in your mind while you are considering this case, then you should not be a juror in this case. If, on the other hand, you can completely disregard that and say that was a former opinion I had but it plays no part in what the facts are now, it is nothing that I am starting with, I am start-
 151 ing as an impartial juror with an open mind on it, then the situation is different. Do you follow me?

Mr. Willett: Yes, sir.

The Court: How do you feel about it?

Mr. Willett: I never condemned the man myself, and I wouldn't condemn him today.

The Court: I mean, can you completely and entirely disregard the previous actions of this man or what has taken place heretofore and approach this question with an open mind without any opinion one way or the other in the case?

Mr. Willett: Yes, sir.

The Court: Isn't that the test, Mr. Hogan?

Mr. Hogan: I don't believe it is.

The Court: You don't believe it is?

Mr. Hogan: No.

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The Court: What do you believe is the test?

Mr. Hogan: I believe from what he said he has an indelible impression in his mind.

The Court: I think you told me you haven't, did you not?

Mr. Willett: Yes, sir.

Mr. Hogan: Mr. Willett, do you ascribe to the theory that this man is presumed to be not guilty until the contrary is shown?

Mr. Willett: I do.

152 Mr. Hogan: Will you follow that theory throughout this trial if you are selected upon this jury?

Mr. Willett: Yes, sir.

Mr. Hogan: If you knew that there were some legal and extenuating circumstances that led to a plea of guilty by this man and that a mistake had been made by the courts, would you resolve that in favor of this defendant on this trial?

Mr. Willett: Yes, sir.

Mr. Hogan: I would like for you to tell the Court just what effect the fact that the defendant pleaded guilty had upon your mind and has existed up until this time?

Mr. Willett: As I said before, I presumed that the matter was closed and it was a closed case, that Robinson was serving his term and had pled guilty, that was the end of it.

Mr. Hogan: And up until today or until this case was refreshed in your mind, you thought him to be guilty, did you not?

Mr. Willett: Yes, sir.

Mr. Hogan: Do you believe that because he was indicted, that that was of itself some evidence of his guilt?

Mr. Willett: No, sir.

Mr. Hogan: I might address that remark to the rest of the six or seven.

153 Mrs. Eastes: I didn't understand the question.

Mr. Hogan: The mere fact that the Court has returned—

The Court: The Grand Jury.

Mr. Hogan: (Continuing) —the Grand Jury has re-

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turned an indictment against the defendant, does that create in your mind a suspicion or prejudice of guilt of the person indicted?

Back to Mr. Willett again—would it require an overwhelming amount of evidence upon the part of the defendant and his witnesses to overcome that idea of guilt that you formerly had fixed in your mind?

Mr. Willett: No. If I sit on this jury, he is innocent until he is proved guilty upon the evidence presented at this hearing.

Mr. Hogan: You would be willing, and you now say that you will forget any idea that you had about his guilt heretofore?

Mr. Willett: Yes.

Mr. Hogan: Have you or any of the six or seven of you, ever sat upon a jury in any court which either recommended or imposed the death penalty?

Mr. Snider: I haven't.

Mr. Hogan: What is your answer, Mr. Snider? Have not?

Mr. Snider: I have not.

154 Mr. Hogan: If, after hearing the evidence and the law as given to you, you should entertain a reasonable doubt either as to the capacity legally of this defendant to commit any of the acts charged in the indictment or a reasonable doubt as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Would you six or seven resolve that doubt in favor of this defendant and acquit him?

Mr. Snider: We would have to give him the benefit of the doubt, wouldn't we?

Mr. Hogan: Would you do it?

Mr. Snider: I would.

Mr. Hogan: Would you, Mr. Sutcliffe?

Mr. Sutcliffe: Yes.

Mr. Hogan: Mrs. Eastes?

Mrs. Eastes: Yes, sir.

Mr. Hogan: Mr. Van Cleave?

Mr. Van Cleave: Yes, sir.

Mr. Hogan: Mrs. Holmgren?

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Mrs. Holmgren: Yes, sir.

Mr. Hogan: Mrs. Pruitt?

Mrs. Pruitt: Yes, sir.

Mr. Hogan: Mr. Willett?

Mr. Willett: Yes, sir.

155 Mr. Hogan: Mr. Willett, if you knew the circumstances under which this defendant seven and a half or more years ago pleaded guilty and the fact that he had been previously adjudicated insane, and that the courts had found that he did not have capacity to either enter a plea of guilty or not guilty, and that he was not represented by counsel, would that tend to dismiss from your mind the fact that he had been allowed incorrectly by the Court to plead guilty?

Mr. Brown: I think that's purely argumentative. Mr. Willett has answered that question, I think, very definitely.

The Court: I think you have asked Mr. Willett quite fully and he has answered two or three times. I don't want to shut you off. He can answer this question, but don't go back and ask him over and over again.

Mr. Hogan: I don't think I had asked him anything about his being—

The Court: I think Mr. Willett has said several times that he can disregard everything which has happened heretofore, hear the case on the evidence that is introduced at this trial and give a verdict on that evidence alone. Haven't you said that, Mr. Willett?

Mr. Willett: Yes, Your Honor. I don't want to make an issue myself, but I want everybody concerned to know what is in my mind as well as I can explain it.

156 The Court: You are right. I think you should ask the question in another way.

The Court: We will take a short recess. During this recess, do not discuss the matter among yourselves or talk about it with anyone.

At this point a short recess was taken, after which the following proceedings were heard:

Mr. Hogan: Mr. Brown, may I see you with the Judge, please?

(The following was heard out of the presence of the

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Jury:)

Mr. Hogan: At this time and at this point, the defendant, by counsel, moves the Court to strike for cause the following: Mr. Albert G. Sutcliffe, Mr. Thompson Willett, Mrs. Martha Eastes, Mr. J. Wallace Van Cleave—because based upon the answers to questions propounded to them they clearly indicate that they have either formed a fixed opinion or prejudice against the defendant or because of business or relationship with the United States Government, or because of social contacts with members of the Stoll, Speed and Sackett families, they do not have a clear, open or unbiased mind and would be dominated and influenced to the prejudice of this defendant and his substantial rights.

(The hearing was resumed in the presence of the Jury, as follows:)

The Court: Recently, and with particular attention to Mr. Sutcliffe and Mr. Willett, as your cases are before me more in mind than the others, although the others may have some connection also—would the fact of your business connections with the Government as they now exist, the contracts with the Government or any supervision that the Government has, or any control that the Government has over the operation of your business, have any effect whatsoever on your verdict in this case, or could you reach a fair and impartial verdict with complete disregard of that business contact and business relationship? Mr. Sutcliffe, how do you feel about it?

Mr. Sutcliffe: It has no bearing on it.

Mr. Willett: I feel the same way as Mr. Sutcliffe.

The Court: Let the motions be overruled.

Mr. Hogan: Exception for the defense.

Mr. Brown: We will strike Mrs. Pruitt.

The Marshal: Mrs. Della Pruitt, vacate the box. Mr. Albert Sutcliffe, Mr. Orva Snider, Mrs. Martha Eastes, Mrs. Irvin Holmgren and Mr. Wallace Van Cleave, vacate the box, please.

The Court: Now, those of you who were just excused from the box, you are excused from further participation in this trial. You can call at the Clerk's office for your

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certificate, then at the Marshal's office for your compensation. Mr. Marshal, give us six more jurors.

The Marshal: Mrs. James C. Young, Mose H. 158 Tatum, Mrs. Susan Arbegust, Clarence Kelly, Younger Rice, Herbert F. Bunton.

(The six above named jurors called by the Marshal were thereupon duly sworn by the Clerk.)

The Court: Now, those of you who have just been called to take the box, you heard me state to all the members of the jury panel the general nature of this case and what it was about. Anyone of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Either of you know anything about the facts of this case other than what you might have acquired from a casual reading in the newspaper or had any connection with the case or participated in it in any way, or related to anyone who has had any connection with the case in any way?

Is there any reason why anyone of you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Does anyone of you have any fixed opinion in the case as to the guilt or innocence of the defendant?

Mr. Rice: Judge, I have, not from what I read, but someone undertook to tell me.

The Court: Is that opinion such that you do not feel it could be changed from a fair consideration of the evidence which you will hear in this case?

Mr. Rice: Well, it would take evidence to change it.

159 The Court: Is it an opinion that you have in the case when you start that would have to be overcome by the evidence?

Mr. Rice: Yes, sir.

The Court: Or could you disregard it as you enter the box and hear the case without regard for any such opinion?

Mr. Rice: Well, of course, if I hear evidence and the case was different from what I heard—

The Court: What I am trying to find out, is it a fixed opinion or do you approach this case with an open mind on it that you will decide the case on the evidence and the

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facts regardless of what you have heard heretofore?

Mr. Rice: Yes, sir.

The Court: You do have an opinion?

Mr. Rice: Yes, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Mr. Rice is in No. 1 place, Mrs. Arbegust No. 2, Mr. Tatum No. 3, Mr. Bunton No. 10, and Mr. Kelly No. 11. Mr. Rice, under the law given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend the death penalty in this case?

Mr. Rice: Yes, sir.

Mr. Brown: Mrs. Arbegust, under the law as given to you by the Court and from the facts as testified to
160 from the witness-stand justify it, would you recommend a death penalty in this case?

Mrs. Arbegust: I could not.

The Court: Mrs. Arbegust, do you have conscientious scruples against death penalties?

Mrs. Arbegust: Yes, I do.

The Court: You feel that you would not be able to give that matter your consideration?

Mrs. Arbegust: I wouldn't like to.

The Court: All right, you may be excused.

The Marshal: Carl P. Clore.

The Court: Remain standing, Mr. Clore, and raise your right hand, please.

(The above named juror was duly sworn by the Clerk.)

The Court: Mr. Clore, you heard me explain this case, what it is about, to the other members of the jury panel. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Clore: No, sir.

The Court: Do you know anything about the facts of this case other than what you may have casually read in the newspaper from time to time?

Mr. Clore: No, sir.

The Court: Have you had any connection with the case in any way?

161 Mr. Clore: No, sir.

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The Court: Or with anyone who has been involved in the case in any way?

Mr. Clore: No, sir.

The Court: Have you any opinion in the case?

Mr. Clore: No, sir.

The Court: Do you approach this case with an open mind?

Mr. Clore: Yes, sir.

The Court: Can you reach a verdict from the evidence which you hear from the stand during this trial?

Mr. Clore: Yes, sir.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Clore: I am not a housekeeper.

The Court: What is your situation?

Mr. Clore: I board.

The Court: You board where?

Mr. Clore: Crestwood.

The Court: You do not keep house at all?

Mr. Clore: No, sir.

The Court: Whom do you board with, anybody in your family or with strangers?

Mr. Clore: Just at the hotel.

162 The Court: I guess you had better be excused, Mr. Clore.

The Marshal: James M. Spalding.

(The above mentioned juror was duly sworn by the Clerk.)

The Court: Mr. Spalding, are you a housekeeper?

Mr. Spalding: Yes, sir.

The Court: You heard me state this case to the other members of the jury panel?

Mr. Spalding: Yes, sir.

The Court: You understand what it is about?

Mr. Spalding: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Spalding: I am not.

The Court: Do you know anything about the facts of

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the case other than what you may have heard casually by reading of the newspaper?

Mr. Spalding: Nothing except what I read in the paper.

The Court: Has that given you any opinion in the case, one way or the other?

Mr. Spalding: Well, at the time of the case I had an opinion, I guess. I always do if I read anything, but that was several years ago, but I don't come here with
163 that opinion.

The Court: You haven't any opinion now?

Mr. Spalding: No.

The Court: You have an open mind as to hearing this case?

Mr. Spalding: Yes, sir.

The Court: You can reach a fair and impartial verdict from what the evidence is in this case without regard to what you may have read before or heard before?

Mr. Spalding: Yes, sir, I can.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict in the case in accordance with the law and evidence?

Mr. Spalding: No.

The Court: Mr. Brown.

Mr. Brown: Under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend the death penalty in the case?

Mr. Spalding: Yes, sir.

Mr. Brown: Mrs. Young, under the law given to you by the Court, and if the facts as testified to from the witness stand justify it, would you recommend a death penalty in this case?

Mrs. Young: Yes.

164 Mr. Brown: Mr. Bunton, under the law given to you by the Court and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in the case?

Mr. Bunton: Yes, sir.

Mr. Brown: Mr. Kelly, under the law as given to you by the Court, and if the facts as testified to from the wit-

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ness-stand justify it, would you recommend a death penalty in this case?

Mr. Kelly: I think so.

Mr. Brown: I pass them to you.

Mr. Hogan: Mr. Rice, you live at Taylorsville, do you not?

Mr. Rice: Yes, sir.

Mr. Hogan: You live in that pretentious stone house on the hill, do you not?

Mr. Rice: Yes, sir.

Mr. Hogan: You have two sons, I believe.

Mr. Rice: Three.

Mr. Hogan: One of them was formerly, if not now, employed by the Health Department of the City of Louisville, was he not?

Mr. Rice: Yes, sir.

Mr. Hogan: With what religious denomination are you affiliated?

165 Mr. Rice: Baptist.

Mr. Hogan: And you are a farmer?

Mr. Rice: Yes, sir.

Mr. Hogan: Are you engaged in any other business?

Mr. Rice: None.

Mr. Hogan: Aren't you equipped to grade roads and dig ponds?

Mr. Rice: The boys have done that.

Mr. Hogan: That's the boys' business. You have no connection with that business?

Mr. Rice: No.

Mr. Hogan: What size farm do you have?

Mr. Rice: Well, we have four. I live on a farm of eighty-six. I have another one of sixty acres. Then we have a hundred and seventy-two acres and a hundred and twenty-seven.

Mr. Hogan: You have four hundred and forty-five acres in all, is that right?

Mr. Rice: Yes, sir.

Mr. Hogan: Now, the next gentleman to you on the rear there, what is your name, sir?

Mr. Spalding: J. M. Spalding.

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Mr. Hogan: Mr. Spalding, where do you live?

Mr. Spalding: I live in Marion County.

Mr. Hogan: Do you live near Raywick, Kentucky?

166 Mr. Spalding: Four and a half miles from Raywick.

Mr. Hogan: Are you a married man?

Mr. Spalding: I am.

Mr. Hogan: Do you have a family?

Mr. Spalding: Yes, sir, I do.

Mr. Hogan: How many children?

Mr. Spalding: Four.

Mr. Hogan: Are they grown or married?

Mr. Spalding: One is married. My oldest son is married. The other three are not married. They are all grown.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Spalding: I am a Catholic.

Mr. Hogan: How far is Raywick from Lebanon?

Mr. Spalding: Eleven miles.

Mr. Hogan: Are you related to Judge Spalding, the County Judge of Lebanon?

Mr. Spalding: Well, it would be distant. Of course, as he ran for office, he thinks I am.

Mr. Hogan: You are a relative when he is seeking office, is that what you mean?

Mr. Spalding: Yes, sir. I think possibly we are a little kin, but not much.

Mr. Hogan: All right, sir. Now Mr. Tatum—Mr. Mose Tatum.

167 Mr. Tatum: Yes, sir.

Mr. Hogan: Where do you live?

Mr. Tatum: Marion County, five miles above Lebanon—East.

Mr. Hogan: East?

Mr. Tatum: Yes, sir.

Mr. Hogan: Out near Gravel Switch?

Mr. Tatum: Up in that neighborhood—not quite that far.

Mr. Hogan: Penicks?

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Mr. Tatum: Just a little below Penicks (?) on the Barbourville Road.

Mr. Hogan: You live on the Barbourville Road, I believe.

Mr. Tatum: Yes, sir.

Mr. Hogan: What is your business?

Mr. Tatum: Farmer.

Mr. Hogan: What size farm do you have?

Mr. Tatum: Three hundred and fifteen acres.

Mr. Hogan: What church do you attend or are you affiliated with?

Mr. Tatum: Two or three different churches. I don't belong to any.

Mr. Hogan: Well, which ones do you usually attend?

Mr. Tatum: Methodist.

168 Mr. Hogan: Mr. Clarence Kelly.

Mr. Kelly: Yes, sir.

Mr. Hogan: Where do you live?

Mr. Kelly: I live about five miles West of Lebanon.

Mr. Hogan: Is that near Taylorsville?

Mr. Kelly: No, sir; West of Lebanon, near St. Mary's.

Mr. Hogan: St. Mary's?

Mr. Kelly: Yes, sir.

Mr. Hogan: Are you a farmer?

Mr. Kelly: Yes, sir, I am on a farm, but the farm is run by two boys of mine. I am the housekeeper.

Mr. Hogan: Are you acquainted with these other Marion County men on this jury?

Mr. Kelly: Yes, sir, I know them, most of them—all of them, I think.

Mr. Hogan: Is your relationship with them pleasant?

Mr. Kelly: Who?

Mr. Hogan: Is your relationship with those other Marion County men in the box pleasant?

Mr. Kelly: Yes, sir. Yes, sir.

Mr. Hogan: Always been that way, I take it.

Mr. Kelly: Yes, sir.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Kelly: I am a Catholic.

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169 Mr. Hogan: Before your boys took over the management and operation of the farm, were you a farmer?

Mr. Kelly: Yes, sir.

Mr. Hogan: That's been your life endeavor?

Mr. Kelly: Always; yes, sir.

Mr. Hogan: Are you married?

Mr. Kelly: Well, my wife is dead.

Mr. Hogan: You are a widower?

Mr. Kelly: Yes, sir.

Mr. Hogan: What is your business, Mr. Bunton?

Mr. Bunton: In the seed business.

Mr. Hogan: Bunton Seed Company?

Mr. Bunton: Yes, sir.

Mr. Hogan: Where do you live?

Mr. Bunton: Anchorage.

Mr. Hogan: What church do you attend?

Mr. Bunton: I am a member of the Christian Church and attend the Presbyterian.

Mr. Hogan: I didn't understand.

Mr. Bunton: I am a member of the Christian Church and I attend the Presbyterian—gas rationing and location, and so forth.

Mr. Hogan: The Presbyterian Church nearer than your Christian Church out there?

Mr. Bunton: That's right.

170 Mr. Hogan: Mrs. Young, where do you reside?

Mrs. Young: 211 Crescent Court.

Mr. Hogan: And what is your husband's name?

Mrs. Young: Fred B. Young.

Mr. Hogan: What is his business?

Mrs. Young: Real estate.

Mr. Hogan: What church do you attend regularly, Mrs. Young?

Mrs. Young: The Methodist.

Mr. Hogan: Are you a member of the Crescent Hill Methodist Church?

Mrs. Young: Crescent Hill Methodist Church.

Mr. Hogan: Where is that church located?

Mrs. Young: On Peterson Avenue.

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Mr. Hogan: Now, you who have been freshly brought into the box—have any of you served upon a jury in this court or on any circuit court within the past twelve months, not counting this term of service?

171 Mr. Hogan: Have you, Mr. Rice?

Mr. Rice: No.

Mr. Hogan: Have you, Mrs. Young?

Mrs. Young: No.

Mr. Hogan: Have you Mr. Kelley?

Mr. Kelley: No, sir.

Mr. Hogan: Are any of you acquainted with any member of the Speed or Stoll or Sackett families?

Mr. Bunton: I am.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: I know Mr. Charles Stoll.

Mr. Hogan: What is the nature of that acquaintanceship?

Mr. Bunton: Two or three years ago Charles Stoll was a member of the Optimist Club, of which I am now a member.

Mr. Hogan: Do you frequently attend meetings of the Optimist Club?

Mr. Bunton: I do, yes, sir. Mr. Stoll isn't a member now. He hasn't been for 2 or 3 years now.

Mr. Hogan: Do any of you other members of the jury who have just been drawn into the box know any member of the Stoll family?

Do any of you know any member of the Speed family?

Do you know any member of the Fred Sackett family?

Or Mrs. Hattie Bishop Speed, do you know her?

172 Do you have any social contacts with the Speed, Sackett or Stoll families?

Do you have any religious contacts or civic contacts? You have already answered, Mr. Bunton.

Do any of you have any fraternal contacts—or any contacts of any nature with any member of those three families or their wives?

Are any of you now, or have you been, or has any member of your family or household ever been an employee of the Stoll, Speed or Sackett families, or of any business,

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corporation or association in which they were interested?

Mr. Spalding: In 1939 my son worked for the Stoll Oil Company for one month. He had made application to the L. & N. for a job and they told him that they would give him a job within a month; and he went to work for the Stoll people but he told them that he would go with the L. & N. people when he was called; and he did and he had worked there about a month but I don't know who he worked for in that company.

Mr. Hogan: But his position terminated satisfactorily with them?

Mr. Spalding: Yes; and he told them when he went there that he would leave if the L. & N. called him.

Mr. Hogan: Are any of you now, or have you at any time ever been, or any member of your household or
 173 any member of your family been an officer, stockholder or director in any company in which the Stoll, Speed or Sackett families had any interest?

I take it by your silence that you have not been any such stockholder or officer.

Are any of you related by the ties of blood or marriage to any members of the Stoll, Speed or Sackett families, or related by ties of blood or marriage to any of the wives of the Stoll, Speed or Sackett families?

Do any of you know, or did you have any social contacts with Mr. Eli Brown who sits at the table?

Do any of you know, or have you had any social, religious, civic or contacts of any kind with Mr. Brown or with Mr. Dudley Inman who sits at the counsel table?

Has anybody ever discussed this case with you?

Mr. Rice: Yes.

Mr. Hogan: Mr. Rice, will you elaborate and tell us about that?

Mr. Rice: Well it has not been so many months ago since a traveling man was telling me something about it. It was news to me, you know. Of course I had sort of forgotten about the case. He claimed that he knew the details of it. My opinion is just what he said.

Mr. Hogan: Did he convey to you what purported to be the details of this case?

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174 Mr. Rice: Yes, sir.

Mr. Hogan: From those details as related to you did you form an opinion about this case?

Mr. Rice: Yes.

Mr. Hogan: Do you have a fixed opinion now as to the guilt or innocence of this defendant?

Mr. Rice: Yes I have.

Mr. Hogan: Does any other member of this jury in the box who has just been called have any opinion, any fixed opinion of the guilt or innocence of this defendant?

I take it by your silence that you have no such opinion.

Are each of you bonafide housekeepers?

Mrs. Davidson: Do you consider me one?

Mr. Hogan: I am referring now to those just brought in. We have been over your housekeeping status. Unless I otherwise indicate, my questions will be addressed to those who have just been put in the box.

Does there exist in you such a state of mind in regard to this case, or to this defendant, that you cannot try this case impartially or without prejudice to the substantial rights of this defendant?

I take it by your silence that you have no such state of mind that prevents your rendering a fair and impartial verdict.

175 Mr. Hogan: Now Mr. Rice I am coming back to you, and that question and your silence does not apply as I have understood you have said that you have a fixed opinion about this case. Does that opinion, that fixed opinion, disqualify you from rendering a fair and impartial verdict in this case one way or the other?

Mr. Rice: Well it would take evidence to change my opinion.

Mr. Hogan: Judge, I don't believe Mr. Rice is really qualified or at all qualified to sit upon this case from his answers.

The Court: Well, just go ahead with the rest of the examination.

Mr. Hogan: Yes, sir.

Have any of you read at any time in the newspapers or magazines an account of the commission of this crime

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charged in the indictment?

Mrs. Young: I read the newspapers, and I also read the roto section.

Mr. Hogan: You have read this roto section that has been exhibited here today?

Mrs. Young: Yes.

Mr. Hogan: Referring to the November 21, 1943 roto section of the Courier-Journal?

Mrs. Young: Yes, sir.

Mr. Hogan: Now, after you read that roto section and after you read the newspapers, did you form an opinion or impression based upon those or upon rumor that would prevent your rendering a fair and impartial verdict in this case?

Mrs. Young: No it did not.

Mr. Hogan: Mr. Bunton, did you read the newspapers?

Mr. Bunton: I read that article in the roto section there.

Mr. Hogan: Did you, after reading that article, or any other newspaper article, form in your mind an impression or opinion that would prevent your rendering a fair and impartial verdict?

Mr. Bunton: No, sir.

Mr. Hogan: Are any of you guardian or ward, or attorney or client, master or servant, landlord or tenant, employer or employee of any member of the Stoll, Speed or Sackett families?

Your silence indicates a negative answer, I take it.

Have you ever complained against the defendant in any criminal prosecution or proceeding?

Did you serve on the Grand Jury which returned the indictment in this case?

Were you a member of a former jury sworn to try Thomas H. Robinson, Sr. and Mrs. Frances Robinson, who were jointly indicted with this defendant?

177 Are you now, or have you ever been, or has any member of your family or household been, stockholders or bondholders, office holders or directors of any of the United States government corporations, associations or agencies such as the Federal Land Bank, the Federal

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Reserve Bank, the Reconstruction Finance Corporation, or the AAA, and like alphabetical subdivisions?

Are you now or has any member of your family ever been employed directly or indirectly by the United States?

I take it that your silence indicates a negative answer.

Do you now receive, or have you ever received a pension, salary, bonus, soldier's or sailor's allotment or benefit or remuneration of any kind from the government?

Mr. Tatum: I receive a bonus on this AAA.

Mr. Hogan: That is what is called a conservation or cut-out check?

Mr. Tatum: Yes.

Mr. Hogan: You signed up to receive those benefits and abided by the rules and regulations of the AAA?

Mr. Tatum: Yes.

Mr. Spalding: I have too.

Mr. Hogan: Did any of you just called to the box receive or have you ever received a railroad retirement pension or allotment or payment?

178 Are you now or have you been at any time, or has any member of your family been on any Board or Commission or Agency of the United States, such as the Civil Service Commission or a member of the War Manpower Commission, or Labor Board, or Office of Price Administration, or on any rationing board or draft board?

I take it by your silence that your answer is no.

Are you now or have you ever been or has any member of your family ever been an office holder or appointee of the United States government?

Do any of you sell directly or indirectly to the government or have any business dealings with the United States government?

Mr. Bunton: I have.

Mr. Hogan: What is the nature and extent of your business relationship with the government?

Mr. Bunton: Emergency supplies of seeds, power lawn-mowers and possibly fertilizers.

Mr. Hogan: Would the fact that you have such relationship with the government influence your verdict, or help you to form any opinion about this case?

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Mr. Bunton: None whatsoever.

Mr. Hogan: Could you sit upon the jury and after hearing the evidence, fairly and impartially make up your own mind not influenced by any outside business connections with the government?

Mr. Bunton: Yes, I could.

Mr. Hogan: To those who have just been put into the box, do you or any of you entertain any prejudice against one charged with a crime who interposes insanity as a defense? In other words, are you of the opinion or belief that because one charged with a crime interposes a plea of insanity that that is done for the purpose of affecting a release and obtaining an acquittal?

Do you have or will you have any prejudice against one imposing a plea of insanity as a defense when it is shown that after the time of the alleged crime there has been a restoration and a recovery of this insanity?

Have you formulated any opinion whatsoever as to the guilt or innocence of this defendant?

Now, Mr. Rice, you have answered. I am now addressing my remarks to the others who have just been put into the box.

Mr. Spalding, have you?

Mr. Spalding: As I have said before, I read the newspapers and I followed the case closely 8 or 9 years ago. I might have had an opinion then but if I did I am of an open mind now, and I do not remember about it.

Mr. Hogan: Would you say then whatever opinion you formed was a fixed opinion?

180 Mr. Spalding: No, it was not a fixed opinion.

Mr. Hogan: Because you don't have it at this time. Is that what you mean to convey?

Mr. Spalding: That is right.

Mr. Hogan: Mr. Tatum, have you formed an opinion?

Mr. Tatum: No, sir, I have not.

Mr. Hogan: Are you open-minded about this matter?

Mr. Tatum: I am.

Mr. Hogan: Mrs. Young?

Mrs. Young: I do not have a fixed opinion.

Mr. Hogan: Well, do you have an opinion?

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Mrs. Young: Yes, at the time I read it I thought I had an opinion, but I do not know that I had a fixed opinion.

Mr. Hogan: Well do you come into this jury box with that opinion, whether it is fixed or unfixed?

Mrs. Young: No, I would not say that I had an opinion at all.

Mr. Hogan: You are willing to be guided by the law and the evidence as you hear it and as will be given to you by His Honor. Is that what you mean to say?

Mrs. Young: Yes.

Mr. Hogan: Is any person related to you by ties of blood or marriage now serving in the military service?

Mr. Bunton: I have a brother who is a Lieutenant.
 181 He was in the field-artillery but I don't know what division he is in now. It is a new branch overseas. At this time I am a volunteer member of the Coast Guard Reserve without pay.

Mr. Hogan: Is that the outfit Jim Stewart and some others are with?

Mr. Bunton: That is right—we battle the Ohio.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: I have a son in the Army.

Mr. Hogan: Is he an officer or non-commissioned officer or anything?

Mr. Kelley: He is in the Medical Corps.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: I have a son in the Army.

Mr. Hogan: Is he an officer or a non-commissioned officer or anything?

Mr. Spalding: He is in the Infantry—a sergeant.

Mr. Hogan: Mr. Rice?

Mr. Rice: I have a son-in-law and a nephew.

Mr. Hogan: If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the legal capacity of this defendant, by reason of the—of an insane mental condition, to commit any of the acts charged in the indictment or as to

his guilt, would you resolve that doubt in favor of
 182 this defendant and acquit him? Would you, Mrs.

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Young?

Mrs. Young: Yes, I would.

Mr. Hogan: Mr. Bunton?

Mr. Buntin: Yes, sir.

Mr. Hogan: Would you do that, Mr. Kelley?

Mr. Kelley: I think so.

Mr. Hogan: Would you come flat-footedly out and say yes that you would?

Mr. Kelley: No, I wouldn't say that flat-footedly.

Mr. Hogan: Well, would you resolve a doubt as to his guilt or as to his insane legal mental condition to be guilty of the crime charged in favor of this defendant and acquit him?

Mr. Kelley: I think not.

Mr. Hogan: Mr. Rice, would you do that?

Mr. Kelley: I do not understand the question.

(At this point the question above was read.)

Mr. Hogan: Let me put the question to you separately. If, after hearing the law and the evidence you should entertain a doubt as to his mental capacity to commit a crime, would you resolve that doubt in the defendant's favor and acquit him?

Mr. Brown: I think it should be reasonable doubt. I don't believe it is "any doubt."

The Court: Yes.

183 Mr. Hogan: If you should entertain a reasonable doubt as to his mental capacity or legal capacity to commit a crime, would you resolve that doubt in his favor and acquit him? Would you, Mrs. Young?

Mrs. Young: Yes, sir.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: Yes.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: Yes.

Mr. Hogan: Mr. Rice?

Mr. Rice: Yes.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: Yes.

Mr. Hogan: Mr. Tatum?

Mr. Tatum: Yes.

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The Court: Mr. Kelley, when you said a few minutes ago you thought you misunderstood the question. I understood your answer a few minutes ago you think not; now you say you would. Did you misunderstand the question a minute ago?

Mr. Kelley: Yes. But since he has explained it I understand it.

Mr. Hogan: Mr. Kelley, we don't want to be misunderstood, and I have no desire to frame a question that you don't understand. Suppose I put it to you once more:

If you should, after hearing the evidence and the law, entertain a reasonable doubt as to Thomas H. Robinson, Jr.'s mental or legal capacity to commit any of the acts charged against him in this indictment, would you resolve that reasonable doubt that you might entertain in his favor and acquit him?

Mr. Kelley: I think so.

Mr. Hogan: Now is that question plain to the other jurors who might not have understood it?

Following that same line, if you should, after hearing the evidence and the law as given to you by His Honor, should entertain a reasonable doubt as to his guilt regardless of his mental condition, would you then resolve that reasonable doubt in his favor and acquit him? Mrs. Young?

Mrs. Young: Yes.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: I would.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: I would.

Mr. Hogan: Mr. Rice?

Mr. Rice: I would.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: I would give him the benefit of the doubt.

Mr. Hogan: Mr. Tatum?

185 Mr. Tatum: Yes.

Mr. Hogan: Have you, or any of you, who have just been called into the box ever sat upon any jury in any court or tribunal which either recommended or imposed the death penalty?

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Mr. Rice?

Mr. Rice: I have not.

Mr. Hogan: Mr. Spalding?

Mr. Spalding: No.

Mr. Hogan: Mr. Tatum?

Mr. Tatum: No.

Mr. Hogan: Mrs. Young?

Mrs. Young: No.

Mr. Hogan: Mr. Bunton?

Mr. Bunton: No.

Mr. Hogan: Mr. Kelley?

Mr. Kelley: No.

Mr. Hogan: Do you believe that because this defendant has been indicted that that is some evidence of his guilt?

Or would the fact that he has been indicted create in your mind a prejudice, suspicion or bias that maybe he is guilty?

It is your jury, Mr. Brown.

186 Mr. Brown: We will not require Mr. Kelley or

Mr. Spalding.

The Court: The Court will also excuse Mr. Younger Rice and Mr. Thompson Willett.

The Marshal: Mrs. Young, Mr. Tatum and Mr. Bunton will also vacate the box.

The Court: Now, members of the jury panel who have not yet been called into the box, I promised the attorneys in this case that I would adjourn temporarily at 5:30, and it is very close to that time now.

I regret that it is going to be necessary to have a night session tonight. We have to get this jury picked if we can so we can start on the trial tomorrow. We will not have a very long session this evening it looks like, but I will have to have your presence here this evening, and also the jury in the box.

We will adjourn at this time and convene at 7:30. We don't usually have night sessions. But we would like to have the examination of the other jurors concluded tonight if it can be reasonably done.

Do not discuss this matter with anyone and do not permit anyone to talk to you about it or in your presence.

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Avoid contact with any person who might be discussing the case or who are interested in this case in any way.

The Marshal will take the five of you to dinner with him. I understood that there was some slight hitch
187 in getting you the luncheon we thought was waiting for you but we believe it will be better tonight and the rest of the time. All of you will return at 7:30 tonight.

At this time there was an adjournment for dinner, after which the following proceedings were had:

The Court: Mr. Marshal, call 7 more jurors.

The Marshal: Mrs. Jane Caldwell

Robert Goff

Richard Howell

William Thornberry

Claude Adams

Preston Joyes

Will Lee Mattingly

(The above 7 jurors called by the Marshal were sworn by the Clerk.)

The Court: You seven who just took the box have heard me outline to the other members of the paeel what this case was about?

Are anyone of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Or do you know anything about the facts of this case other than what you might have obtained by a casual reading of the newspapers?

188 Mr. Howell: I have a neighbor who sat on the jury when this case was tried, Mr. Thomas Robinson.

Sr. was tried, and I was County Judge at the time, and we talked the case over and I talked with him, and he talked with me, and I followed the case up with him and have talked to him since the new trial.

The Court: You feel that you have talked about the case until you cannot render an impartial verdict?

Mr. Howell: I think so.

The Court: What is your name?

Mr. Howell: Richard Howell.

The Court: All right, step down, Mr. Howell.

The Marshal: Covington Jett take the box.

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(Covington Jett was sworn by the Clerk.)

The Court: Mr. Jett, you heard this case outlined to the other members of the panel?

Mr. Jett: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Jett: No.

The Court: Now I will repeat to the other seven members who took the box and to you, also, do you know anything about the facts of this case other than what you might have obtained from a casual reading of the newspapers?

Mr. Jett: I discussed it several times.

The Court: Did that give you any definite or
189 fixed opinion about the matter?

Mr. Jett: I think so.

The Court: You think so?

Mr. Jett: Yes, sir.

The Court: You feel that you have discussed it in such a way that you will not have an open mind on this question?

Mr. Jett: I think so.

The Court: All right, Mr. Jett.

The Marshal: Mr. Jett, vacate the box. J. Wilson Green take the box.

(The Clerk swore Mr. Green.)

The Court: Mr. Green, you have heard me outline this case to the other members of the panel? :

Mr. Green: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Green: No, sir.

The Court: Do you know anything about the facts in the case other than what you might have obtained than by a casual reading of the newspapers?

Mr. Green: No.

The Court: Does any one of the 7 who took the box tonight have any fixed opinion about the matter which would prevent them from hearing and considering
190 this case with an open mind from the evidence pro-

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duced during this trial?

Is there any reason why anyone of you cannot sit on the jury in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Brown: Mrs. Caldwell, under the law as given to you by the Court, and if the evidence as heard from the witness stand justifies it, would you recommend the death penalty in this case?

Mrs. Caldwell: Yes.

Mr. Brown: Mr. Goff, under the law as given to you by the Court, and if the evidence as heard from the witness stand justifies it, would you recommend the imposition of the death penalty in this case?

Mr. Goff: I would.

Mr. Brown: Mr. Green, under the law as given to you by the Court, and if the evidence as testified to from the witness stand justifies it, would you recommend the imposition of the death penalty in this case?

Mr. Green: Yes.

Mr. Brown: Mr. Thornberry, under the law as given to you by the Court and if the facts as testified to from the witness stand justifies it, would you recommend the death penalty against the defendant?

Mr. Thornberry: Yes, sir.

Mr. Brown: Mr. Adams, under the law as given
191 to you by the court, and if the facts as testified to justify it, would you vote for the imposition of the death penalty in this case?

Mr. Adams: Yes, sir.

Mr. Brown: Mr. Joyes, under the law as given to you by the Court, and if the facts as testified to justify it, would you vote for the imposition of the death penalty?

Mr. Joyes: I would.

Mr. Brown: Mr. Mattingly, under the law as given to you by the Court, and if the facts as testified to justify it, would you vote for the imposition of the death penalty against the defendant?

Mr. Mattingly: I could.

Mr. Brown: We will pass them to you.

Mr. Hogan: Mrs. Caldwell, where do you live?

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Mrs. Caldwell: Anchorage, Kentucky.

Mr. Hogan: Are you the wife of Mr. George Caldwell an officer of the Louisville Trust Company?

Mrs. Caldwell: That's right.

Mr. Hogan: Of what religious denomination are you affiliated with?

Mrs. Caldwell: I am an Episcopalian.

Mr. Hogan: Mr. Goff, where do you live?

Mr. Goff: Hardinsburg.

192 Mr. Hogan: Is that in Breckenridge County?

Mr. Goff: Yes, sir.

Mr. Hogan: What is your business?

Mr. Goff: Lumber business.

Mr. Hogan: Do you work for or do you operate a lumber place?

Mr. Goff: I operate lumber place.

Mr. Hogan: You have your own business?

Mr. Goff: ~~Yes~~.

Mr. Hogan: Which church do you attend or do you belong?

Mr. Goff: Baptist.

Mr. Hogan: Mr. Green, where do you live?

Mr. Green: Spencer County, near Taylorsville.

Mr. Hogan: What is your business?

Mr. Green: Farming.

Mr. Hogan: What is the size of your farm?

Mr. Green: About 200 acres.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Green: Christian.

Mr. Hogan: Mr. Thornberry, where do you live?

Mr. Thornberry: Hodgenville.

Mr. Hogan: What is your business?

Mr. Thornberry: I haven't got any.

193 Mr. Hogan: Are you retired?

Mr. Thornberry: I have been a farmer all my life until last September a year ago, and I sold out and quit. I am at present helping my daughter operate a service station at Hodgenville.

Mr. Hogan: You are a retired farmer, in other words,

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aren't you?

Mr. Thornberry: Yes, sir.

Mr. Hogan: That is what you might call Mr. Goff, I guess. How many children do you have?

Mr. Thornberry: Seven.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Thornberry: Catholic.

Mr. Hogan: Are you a widower?

Mr. Thornberry: No, sir.

Mr. Hogan: Your wife is living?

Mr. Thornberry: My wife is living, yes.

Mr. Hogan: Mr. Adams, where do you live?

Mr. Adams: Audubon Park.

Mr. Hogan: What is your business, profession, or occupation?

Mr. Adams: I am a route supervisor at the Ewing Von Allmen Dairies.

Mr. Hogan: What is your religion?

194 Mr. Adams: Christian.

Mr. Hogan: Mr. Joyes, what is your business?

Mr. Joyes: I am in the lumber business and the wood preserving business.

Mr. Hogan: Where do you live?

Mr. Joyes: On the Alta Vista Road.

Mr. Hogan: I believe you are associated with Mr. Graham Brown in the lumber business?

Mr. Joyes: Yes, sir.

Mr. Hogan: What is your religious belief or what church do you attend?

Mr. Joyes: Presbyterian.

Mr. Hogan: Mr. Mattingly, where do you live?

Mr. Mattingly: In Marion County, at Loretto.

Mr. Hogan: What is your middle name?

Mr. Mattingly: Will Lee.

Mr. Hogan: Are you married?

Mr. Mattingly: Yes, sir.

Mr. Hogan: Any children?

Mr. Mattingly: I haven't got any children.

Mr. Hogan: Is your wife living?

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Mr. Mattingly: Yes, sir.

Mr. Hogan: What is your business?

Mr. Mattingly: I was a farmer five years ago, and then I retired and I am working at a filling station now.

195 Mr. Hogan: You and Mr. Thornberry are in the same category—retired farmers and working at filling stations.

Mr. Mattingly: Yes.

Mr. Hogan: Whose products do you sell?

Mr. Mattingly: Gulf.

Mr. Hogan: What about you, Mr. Thornberry?

Mr. Thornberry: Gasoline service station—a filling station.

Mr. Hogan: Whose petroleum products or gasoline do you sell at this filling station?

Mr. Thornberry: The Ohio Oil Company.

Mr. Hogan: Well what I was trying to determine is whether or not it was the Stoll Oil Company's products?

Mr. Thornberry: No, sir, it has nothing to do with that.

Mr. Hogan: Now do you who have just been put in the box, are you related by the ties of blood or marriage to any member of the Stoll, Speed or Sackett families?

I take it by your silence that you are not related to any member of those families.

Mr. Hogan: Are you acquainted with any members of those three families I have just mentioned?

Mrs. Caldwell: I am, sir.

Mr. Hogan: What is the nature and extent of your acquaintanceship?

196 Mrs. Caldwell: It is of a social nature—not an intimate acquaintance at all.

Mr. Hogan: I believe you are an artist, aren't you?

Mrs. Caldwell: Trying to be one.

Mr. Hogan: Could you put it that you are artistically inclined?

Mrs. Caldwell: Yes.

Mr. Hogan: Are you not a director of the Speed Museum?

Mrs. Caldwell: That is true.

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Mr. Hogan: And you have just recently been made a director of that place?

Mrs. Caldwell: Last spring.

Mr. Hogan: Did you know Mrs. Hattie Bishop Speed in her lifetime?

Mrs. Caldwell: Yes I did.

Mr. Hogan: How well did you know her?

Mrs. Caldwell: As you would know a person of a different generation. I had known her for a great many years but not intimately.

Mr. Hogan: Do you know Mrs. Alice Stoll?

Mrs. Caldwell: Yes.

Mr. Hogan: Do you know Mr. Berry Stoll?

Mrs. Caldwell: I have met him, yes.

Mr. Hogan: What social, religious, civic or charitable contacts do you have with the members of the Stoll, 197 Speed, or Sackett families?

Mrs. Caldwell: Well, as I say, social that would not in any way be termed intimate. I have never been in Mrs. Stoll's house nor has she been at mine. I have been with her at parties frequently in my life.

Mr. Hogan: Would your acquaintanceship with those families influence your verdict in this case?

Mrs. Caldwell: I think not.

Mr. Hogan: Would the fact that you are a director of the Speed Museum influence your verdict?

Mrs. Caldwell: No.

Mr. Hogan: Mr. Joyes, what is the nature of your acquaintance with the members of those three families?

Mr. Joyes: Well, I have known the Speed family and the Sacketts and the Stolls for ten or twenty years. I have been associated with Mr. Speed and Mrs. Speed on the Board of the Louisville Collegiate School that they have sponsored for years. I have been on the Board of Directors with Mr. William Stoll.

Mr. Hogan: Would it embarrass or humiliate you or influence your verdict in this case, considering your acquaintance and business relationship with the members of those families?

Mr. Joyes: I don't think so.

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Mr. Hogan: Do you think you could render a fair
 198 and impartial verdict in this case considering your
 acquaintanceship and business relationship and social
 relationship with those families and the members thereof
 after hearing the law and the evidence?

Mr. Joyes: I do.

Mr. Hogan: I will address my remarks now to those
 of you who have just been put into the box collectively and
 individually also so if you have any yes or no answer to
 make you will know that my remarks are addressed to all
 of you.

Have you or do you know Mr. Eli Brown or Mr. Dudley
 Inman?

Mr. Joyes: I know Mr. Brown.

Mrs. Caldwell: I know Mr. Brown.

Mr. Hogan: Mrs. Caldwell, what is the extent and na-
 ture of your acquaintance with Mr. Brown?

Mrs. Caldwell: Social.

Mr. Hogan: Mr. Joyes?

Mr. Joyes: I have known Mr. Brown and his family
 for years. He is a very good friend of my younger
 brother.

Mr. Hogan: Would the fact that you have known him
 for a number of years and possibly his father in the lumber
 business and the fact that your brother and Mr. Brown are
 very good friends, would those facts influence your
 199 judgment in this case in which he is the prosecuting
 attorney?

Mr. Joyes: I don't think so.

Mr. Hogan: Mrs. Caldwell, would your acquaintanceship
 with Mr. Brown influence your verdict?

Mrs. Caldwell: No, sir, it would not.

Mr. Hogan: Are you or are any of you an officer, stock-
 holder or employee of any company, association or cor-
 poration in which the Sacketts, Speed or Stoll families
 have an interest?

Mr. Joyes: I am not in a business enterprise, but at
 the Louisville Collegiate School is the only thing. I am
 a director in that—and vice president.

Mr. Hogan: Mrs. Caldwell, are you in that category

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of being an officer or agent or business associate in any firm or corporation in which the members of the Sackett, or Stoll or Speed families have an interest?

Mrs. Caldwell: No. Unless you consider the directorship of the Speed Museum.

Mr. Hogan: Other than that?

Mrs. Caldwell: No.

Mr. Joyes: I am also a director in the Speed Museum.

Mr. Hogan: Would that influence your verdict in this case in which the granddaughter of Mrs. Hattie Bishop Speed is the prosecuting witness?

Mr. Joyes: No.

200 Mr. Hogan: Mrs. Caldwell, is your husband an officer, stockholder or director in any of those companies in which these families have an interest?

Mrs. Caldwell: I am not certain. He may have some stock in the Louisville Cement Company but I could not be sure about that.

Mr. Hogan: Is it your belief that he has?

Mrs. Caldwell: He had one time.

Mr. Hogan: The Louisville Cement Company is a company operated by the Speed family, isn't it?

Mrs. Caldwell: Yes.

Mr. Hogan: Do you know what connection with that company Mr. Will Speed has? The father of Mrs. Alice Stoll?

Mrs. Caldwell: No I don't know exactly. I know he did have a connection at one time.

Mr. Hogan: Isn't he president of that company?

Mrs. Caldwell: I don't know.

Mr. Hogan: Have you, or any of you who have just been called to the box, served upon a jury in this court or in circuit court within the past 12 months, other than this term of service?

Mr. Mattingly: I have.

Mr. Hogan: I take it by your silence that the others have not. Mr. Mattingly, what court did you serve in?

201 Mr. Mattingly: Circuit Court in Lebanon in January.

Mr. Hogan: Are you or is any member of your family

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or household a member or stockholder or director of any business, firm or corporation which now does or has in the past done business with the United States or any of its subdivision including defense or war plants owned or controlled, leased, supervised or operated in furtherance of the war effort or the home defense effort?

Mr. Joyes: Yes I am.

Mr. Hogan: Tell us about that?

Mr. Joyes: Our lumber business and wood preserving business is 50% with either the government agencies direct or sub-contracts.

Mr. Hogan: What position do you hold with that company?

Mr. Joyes: Vice president and director.

Mr. Hogan: What is the name of that company?

Mr. Joyes: W. P. Brown Lumber Company.

Mr. Hogan: Is Mr. Eli Brown II, the father of Mr. Eli Brown III, in that company?

Mr. Joyes: No, sir.

Mr. Hogan: That is a different Brown?

Mr. Joyes: Yes, sir.

Mr. Hogan: Mr. Eli Brown's father was in the lumber business at one time?

202 Mr. Joyes: I think he had a chair factory. I was in the manufacturing end of the business and he was in the retail end.

Mr. Hogan: As vice president of the W. P. Brown Lumber Company, do you have contacts or business relationships with members of the United States Government?

Mr. Joyes: Yes, sir.

Mr. Hogan: Extensive?

Mr. Joyes: Very extensive; yes, sir.

Mr. Hogan: Are you jurors bonafide housekeepers and residents of the State of Kentucky?

Does there exist in the minds of any of you a state of mind in regard to this case or to this defendant that you cannot try this case impartially and without prejudice to the rights—to the substantial rights of this defendant?

I take it by your silence that the answers of each of you

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is in the negative.

Have you read at any time in the newspapers or magazines an account of the commission of the crime alleged in the indictment?

Mr. Joyes: I have, but not recently.

Mr. Hogan: At any time, I mean?

Mr. Joyes: Yes, sir.

Mr. Hogan: Now Mrs. Caldwell, have you so read
203 the magazines and the newspaper articles?

Mrs. Caldwell: Not recently. I read it in the Alabama papers at the time of the crime.

Mr. Hogan: What was the last part of your answer?

Mrs. Caldwell: I was staying in Alabama at the time of the kidnapping and I read it in the papers there.

Mr. Hogan: That was some 9 years ago?

Mrs. Caldwell: Yes.

Mr. Hogan: Did you read in the magazine section of the Courier-Journal of November 21, 1943, this article about this case?

Mrs. Caldwell: No.

Mr. Hogan: Did you, Mr. Joyes?

Mr. Joyes: No.

Mr. Hogan: Did you, Mr. Mattingly?

Mr. Mattingly: No. I heard talk about it.

Mr. Hogan: Mr. Thornberry?

Mr. Thornberry: No.

Mr. Hogan: Did you, or any of you, who have read at any time in the newspapers or magazines an account of the crime alleged in this indictment, did you form or express any opinion after you read those articles about the guilt or innocence of this defendant?

Mr. Joyes: I probably did some years ago at the
204 time, but I have not thought about it for the last 8 or 9 years.

Mr. Hogan: Well, what was your opinion at that time?

Mr. Joyes: I really do not remember any of the details of the case. Of course you could not help but remember the case. It was a very prominent thing to me due to the fact that it was about people I knew.

Mr. Hogan: I mean, did you form some opinion after

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reading those?

Mr. Joyes: I probably did.

Mr. Hogan: Well, have you carried that opinion on down through the years to this time?

Mr. Joyes: I hardly think so, and of course I had an opinion at that time and, as I say, until this thing came up again I did not have—I had not even discussed it for 5, 6, or 7 years or even thought about it.

Mr. Hogan: So that opinion, was it favorable or unfavorable to this defendant?

Mr. Joyes: I think at the time it was unfavorable.

Mr. Hogan: But you will not say then that you have changed your unfavorable opinion as to the guilt or innocence of this defendant?

Mr. Joyes: No I will not say that I have changed my opinion but I think I could give him a fair verdict after the evidence is presented in this court.

205 Mr. Hogan: As it now stands, you are in the position of at one time having formulated an unfavorable opinion toward this defendant, but you now believe that in the trial of this case if the evidence was sufficient to overcome that unfavorable opinion, you may or may not be able to overlook that and forget the former opinion that you formulated?

Mr. Joyes: I think my mind is open on the subject.

Mr. Hogan: Mrs. Caldwell, you had an answer to make as to the opinion you formulated?

Mrs. Caldwell: My feeling is much the same as that of Mr. Joyes. At that time I had an opinion because it was about the people I knew but I think now I have an open mind on it.

Mr. Hogan: If I understand your answer, at the time you read these articles, you formed an unfavorable opinion?

Mrs. Caldwell: I think I did.

Mr. Hogan: You never did subsequent to that formulate a favorable opinion to this defendant?

Mrs. Caldwell: I discussed it quite a little then. But I do not think I have changed that opinion because I have not discussed it but I still think I have an open mind about

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it.

206 Mr. Hogan: Are any of you who have been called this last time on the panel guardian or ward, attorney or client, master or servant, landlord or tenant, employer or employee on wages of the members of the family of Mrs. Alice Speed Stoll or the Speed, Stoll or Sackett families?

Have you ever complained against the defendant in any criminal prosecution or proceeding?

Did you serve on the Grand Jury which returned the indictment in this case?

Were you a member of a former jury sworn to try Thomas H. Robinson Sr. and Frances Robinson who were jointly indicted in this case with this defendant in October 1934?

Are you now or have you ever been or are any members of your family or household stock or bondholders, office holders or directors of any United States government corporations, associations or agencies such as the Federal Land Bank, the Commodity Credit Corporation or the AAA or any of the alphabetical groups or divisions?

Mr. Joyes: I had a brother in the Office of Price Administration until about 6 months ago in Washington.

Mr. Hogan: Has he now severed his relations with that office?

Mr. Joyes: Yes.

Mr. Hogan: Has any member of your household now or at any time ever been directly or indirectly employed by the United States?

207 Mr. Mattingly: I was Chairman of the Draft Board 2 years.

Mr. Hogan: Are you still Chairman, Mr. Mattingly?

Mr. Mattingly: Yes.

Mr. Adams: You said any member of the family?

Mr. Hogan: Yes?

Mr. Adams: I have a brother who was in the Veterans' Bureau but he is now in the Army.

Mr. Hogan: What is his name?

Mr. Adams: A. Y. Adams.

Mr. Hogan: How long was he so connected?

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Mr. Adams: Since 1931 until he went into the Army at this time. He was a reserve officer.

Mr. Hogan: Do you now, or have you ever received a pension, salary, bonus, soldier or sailor allotment, benefit or remuneration in any form from the United States of America?

Mr. Joyes: I received a bonus in the last war for serving.

Mr. Hogan: Any other answers to that question?

Mrs. Caldwell: My husband received the same bonus.

Mr. Joyes: Your last question?

Mr. Hogan: Do you receive or have you ever received railroad retirement pension or payment?

Mr. Joyes: No.

208 Mr. Hogan: Do you now, or have you ever, received from the United States any subsidy allowance or bonus or crop cut-out payment?

Mr. Thornberry: I did when I was farming.

Mr. Hogan: Mr. Adams?

Mr. Adams: Yes, sir, Triple A. payments in 1941.

Mr. Hogan: You do not receive them now?

Mr. Adams: No.

Mr. Hogan: Anybody else have an answer?

Mr. Goff: I receive Triple A payments.

Mr. Hogan: Are you a member of any board or commission of the United States, such as draft boards or the manpower commission or the Transportation Commission?

Are you now or have you ever been an officeholder or appointee of the government?

Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense?

I take it by your silence that you do not.

Do you have or will you have any prejudice against one, particularly this defendant, if upon the trial of this case he should interpose a plea of insanity as a defense and would establish that thereafter he had made a recovery and is now restored to sanity?

I take it by your silence that your answers individually and collectively are no?

209 Have you formulated any opinion whatsoever as

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to the guilt or innocence of this defendant?

Mrs. Caldwell: Only insofar as I have expressed before, having read the accounts in the paper.

Mr. Hogan: Mrs. Caldwell, I would like for you to tell us just what that opinion amounted to at the time you read about it?

Mrs. Caldwell: Well I think I can best express it by saying that I was interested in the case from the fact that they were people I had known and that my family had known.

Mr. Hogan: You were impassioned and inflamed?

Mrs. Caldwell: No. I was not impassioned, but I certainly did not have a very favorable opinion at that time.

Mr. Hogan: And I understood you to say you have not changed that opinion up to this time?

Mrs. Caldwell: No, I have given it very little thought.

Mr. Hogan: Mr. Joyes, what is your opinion, or what was your opinion at that time?

Mr. Joyes: My opinion was probably the same as 99% of the people, a guilty plea was made and I just assumed that he was guilty.

Mr. Hogan: And you formulated in your mind at that time that he probably was guilty?

210 Mr. Joyes: Yes, sir.

Mr. Hogan: And you likewise have not changed your opinion?

Mr. Joyes: Well, I am frank to say that I have no opinion now. The case has to be tried and my mind is open on it.

Mr. Hogan: Well, do you intend by that that you have changed your opinion?

Mr. Joyes: I did not say that I have changed my opinion—I have not had anything to change my opinion.

Mr. Hogan: Then your opinion is the same as it was back there, that of guilty?

Mr. Joyes: Up to date, yes.

Mr. Hogan: If you should, after hearing evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of this defendant to commit any of the acts charged in the indictment, or enter-

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tain a reasonable doubt as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Mr. Joyes: Yes, sir.

Mr. Hogan: Mrs. Caldwell?

Mrs. Caldwell: Yes, sir.

Mr. Hogan: Mr. Goff?

Mr. Goff: Yes, sir.

Mr. Hogan: Mr. Green?

211 Mr. Green: Yes, sir.

Mr. Hogan: Mr. Thornberry?

Mr. Thornberry: I didn't understand the question.

Mr. Hogan: Mr. Thornberry, is your hearing a little bit impaired? Do you have any difficulty in understanding me from here?

Mr. Thornberry: What is that?

Mr. Hogan: Is your hearing in any wise impaired? Can you understand what I am saying?

Mr. Thornberry: Most of the things. Some times I can't.

Mr. Hogan: Do you have any impairment of hearing?

Mr. Thornberry: A little—not very much. Sometimes I can understand you and sometimes I can't.

Mr. Hogan: You have not been able to understand everything that I have said?

Mr. Thornberry: Not everything—some things I understand.

Mr. Hogan: Well, let me ask you in a little bit louder tone then. If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of the defendant, Thomas H. Robinson Jr., to commit any of the acts charged in the indictment; or should entertain, after hearing
212 the evidence and the law, a reasonable doubt as to his guilt, would you then resolve that doubt in favor of this defendant and acquit him?

Mr. Thornberry: Yes, sir.

Mr. Hogan: Mr. Adams, did you have an answer to make to that particular question?

Mr. Adams: No.

Mr. Hogan: To all of you, have you ever sat upon any

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jury in any court, or tribunal, which either recommended or imposed the death penalty?

I take it by your silence that your answers are no.

Do you believe that because this defendant has been indicted that that is some evidence of his guilt?

Or, would the fact that he has been indicted create in your mind a prejudice, bias or suspicion that he may be guilty?

I take it by your silence that your answers are no.

Mr. Hogan: Mr. Brown, I pass them to you.

213 Mr. Brown: We accept the jury.

Mr. Hogan: May I see you at the judge's table, Mr. Brown?

(There was a conference off the record held between counsel and the Court.)

The Court: The defense motion to excuse Mrs. Caldwell and Mr. Joyes is sustained. They may be excused from the box.

The Marshal: Mr. Claude Adams, vacate the box.

The Court: Call three more.

The Marshal: Mrs. Mary Swope, Frank P. Able, Earl W. Ackerman.

(The three above named jurors were duly sworn by the Clerk.)

The Court: You three who have just taken your seats in the box have heard me previously explain this indictment to the other members of the panel. Anyone of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Does anyone of you know anything about the facts of this case other than what you might have learned by the casual reading of the newspapers?

Have you had any participation in the case or connection with anybody who had any participation in the case in any way?

Has your reading or talk with anyone given you any opinion, any fixed opinion, in this case about the guilt
214 or innocence of this defendant?

Or is there any reason why anyone of you three cannot sit as a jury in this case and render a fair and im-

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partial verdict according to the law and the evidence?

Mr. Brown.

Mr. Brown: Mrs. Swope, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mrs. Swope: Yes.

Mr. Brown: Mr. Able, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mr. Able: Yes.

Mr. Brown: Mr. Ackerman, under the law as given to you by the Court, and if the facts testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mr. Ackerman: Yes, sir.

Mr. Brown: I pass them to you.

Mr. Hogan: Mrs. Swope, where do you live?

Mrs. Swope: I live at the Weissinger-Gaulbert, Third and Broadway.

Mr. Hogan: Do you have any children?

215 Mrs. Swope: Yes, sir.

Mr. Hogan: What is your religious belief?

Mrs. Swope: A Baptist.

Mr. Hogan: Mr. Able, where do you live?

Mr. Able: 4106 Winchester Road.

Mr. Hogan: Where is that located?

Mr. Able: St. Matthews.

Mr. Hogan: What is your business or profession?

Mr. Able: I am with Vissman & Company.

Mr. Hogan: In what capacity?

Mr. Able: Well, I am department manager, in an executive capacity.

Mr. Hogan: What church do you attend?

Mr. Able: The Baptist Church.

Mr. Hogan: Are you married?

Mr. Able: Yes, sir.

Mr. Hogan: Have you any children?

Mr. Able: Yes, sir.

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Mr. Hogan: Mrs. Swope, do you have children?

Mrs. Swope: Yes, I have one daughter.

Mr. Hogan: And what age is your daughter?

Mrs. Swope: She is sitting right there with the red coat on—twenty-three years old.

Mr. Hogan: Mr. Ackerman, where do you live?

Mr. Ackerman: 100 S. 36th Street.

216 Mr. Hogan: What is your business or profession?

Mr. Ackerman: Head draftsman, Southern Bell Telephone Company.

Mr. Hogan: What is your religious belief?

Mr. Ackerman: I am not affiliated with any church.

Mr. Hogan: Are you married?

Mr. Ackerman: Yes, sir.

Mr. Hogan: Have any children?

Mr. Ackerman: Two.

Mr. Hogan: Directing my remarks now to you three who have just taken your places in the box, are you acquainted with Mr. Eli Brown?

Have you any social, religious or civic contact with him or any members of his family?

Do you know Mr. Dudley Inman who sits at Mr. Brown's right.

Do you have any business, social or civic contacts with him or members of his family?

Do you three or anyone of you, or any of you, know Mrs. Alice Stoll or any member of the Stoll family, the Sackett family, or the Speed family?

Mr. Able: I know Mr. Bill Stoll—W. A. Stoll.

Mr. Hogan: What is the nature and extent of that acquaintanceship, Mr. Able?

Mr. Able: Well, I have been associated with Mr. **217** Bill Stoll in a number of civic enterprises.

Mr. Hogan: Such as what?

Mr. Able: Well, principally the Board of Trade activities.

Mr. Hogan: Are you a member of the Board of Trade?

Mr. Able: Our company is.

Mr. Hogan: Would that acquaintanceship with Mr. Stoll affect your decision in this case in which his sister-

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in-law is to be the chief prosecuting witness?

Mr. Able: I shouldn't think so.

Mr. Hogan: How long have you known Mr. Stoll—William Stoll?

Mr. Able: About fifteen years, I expect.

Mr. Hogan: Do any of the other—do the other two members know any member of the Speed, Stoll or Sackett families or have any contacts or acquaintanceship with them?

Do you three own any stock in any company in which the Stoll, Speed or Sackett families are interested?

Have you served upon a jury in the Circuit Court here or any other place, or in this court, within the past twelve months?

Are you a housekeeper?

I take it that your answers of the three is in the affirmative.

Have any of you three read any newspaper accounts of this alleged crime?

When you read those, did you formulate any opinion about the guilt or innocence of this defendant?

Mr. Able: I did.

Mr. Hogan: You say you did?

Mr. Able: Yes.

Mr. Hogan: Was that opinion unfavorable to this defendant?

Mr. Able: Unfavorable; yes, sir.

Mr. Hogan: Do you still have that opinion?

Mr. Able: Yes. I haven't had any reason to change it.

Mr. Hogan: Mrs. Swope, have you formulated any opinion from anything you might have read?

Mrs. Swope: No, sir.

Mr. Hogan: Mr. Ackerman, have you formulated any opinion?

Mr. Ackerman: No, sir; just considered it a piece of news and that was all.

Mr. Hogan: Have any of you ever been employed by any concern in which the Speed, Stoll or Sackett families have an interest?

Are you related by the ties of blood or marriage to any

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members of those three families?

Are any of the three of you or any one of the
219 three a member of any board or commission of the
 United States Government?

Have you received, directly or indirectly, a subsidy or
 cut-out payment, or other bonus of any kind, from the
 Government?

Mr. Able: Our company does.

Mr. Hogan: That's a packing house?

Mr. Able: Yes, sir. I received a bonus after the last
 war.

Mr. Hogan: Other than a soldier's bonus, I refer to.

Mr. Able: No, sir.

Mr. Hogan: Are you now, or have you ever been, an
 office holder of the United States Government?

Do you entertain any prejudice against one charged with
 a crime who interposes insanity as a defense?

Mr. Able: I do.

Mr. Hogan: How about you, Mr. Ackerman?

Mr. Ackerman: No, sir.

Mr. Hogan: Mrs. Swope?

Mrs. Swope: No, sir.

Mr. Hogan: Do you have or will you have any preju-
 dice against one interposing a plea of insanity as a defense
 who thereafter makes a recovery and is restored to sanity?
 Do you have a prejudice?

Mr. Able: Yes.

Mr. Hogan: Do you have, Mr. Ackerman?

220 Mr. Ackerman: No, sir.

Mr. Hogan: And Mrs. Swope, do you have?

Mrs. Swope: No, sir.

Mr. Hogan: Have you formulated any opinion what-
 soever as to the guilt or innocence of this defendant? Of
 course, I believe your answer was that you have—

The Court: I think all three of them have answered
 that, haven't they?

Mr. Hogan: I understood that only Mr. Able had.

The Court: Didn't the other two answer those ques-
 tions?

Mr. Ackerman: No, sir.

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Mr. Hogan: If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of this defendant to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of this defendant and acquit him? Would you, Mrs. Swope?

Mrs. Swope: Yes.

Mr. Hogan: If you should entertain a reasonable doubt either as to his capacity to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Mrs. Swope: Yes.

Mr. Hogan: What was your answer?

221 Mr. Brown: She said yes.

Mr. Hogan: Would you, Mr. Ackerman?

Mr. Ackerman: Yes, sir.

Mr. Hogan: Would you, Mr. Able?

Mr. Able: Probably I would.

Mr. Hogan: Has anyone of you three ever sat upon any jury in any court or in any proceeding which either recommended or imposed the death penalty? Mr. Able?

Mr. Able: No. I voted for it.

Mr. Hogan: For the death penalty?

Mr. Able: Yes, sir.

Mr. Hogan: I take it from the silence of the other two that you have not, Mrs. Swope and Mr. Ackerman.

Mr. Ackerman: No, I haven't.

Mrs. Swope: No.

Mr. Hogan: Do you believe that because this defendant has been indicted, that that is some evidence of his guilt or would the fact that this defendant has been indicted create in your mind a prejudice or suspicion that he may be guilty?

Mr. Ackerman: No, sir.

Mrs. Swope: No, sir.

Mr. Able: It might create a suspicion, but that's all.

Mr. Hogan: It would do that?

222 Mr. Able: I said it might do that.

Mr. Hogan: You may take them, Mr. Brown.

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Mr. Brown: We excuse Mrs. Swope.

Mr. Hogan: Mr. Brown, I would like to see you at the Judge's stand.

(A conference was held between counsel and the Court without the hearing of the Jury.)

The Court: Motion of the defendant to excuse Mr. Able is sustained for cause. Any further challenges at this time?

Mr. Hogan: No further challenges.

The Court: All right, let's have two more.

The Marshal: Thomas J. Beaven; Wilbur F. Bott.

(The two above named jurors were duly sworn by the Clerk.)

The Court: Now, you two gentlemen who just took your seats in the box, you heard me explain this case to the other members of the panel. Either one of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Do you know anything about the facts of this case other than what you have learned through your casual reading of the newspapers?

Have you had any connection with anybody who has had any participation in this case in any way, directly
223 or indirectly?

Is there any reason why either one of you cannot sit as a juror in this case and render a fair and impartial verdict in this case according to the law and the evidence?

Has either one of you any fixed opinion in this case from anything you have read or heard, or from any person you have talked with about this case?

Mr. Brown.

Mr. Brown: Mr. Beaven, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Mr. Beaven: I could.

Mr. Brown: Mr. Bott, under the law as given to you by the Court, and if the facts justify it, would you recommend a death penalty in this case?

Mr. Bott: I could not.

The Court: All right, step aside, Mr. Bott.

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The Marshal: Mrs. Harriet Grant.

(The above named juror was duly sworn by the Clerk.)

The Court: Mrs. Grant, you heard me explain the general nature of this case?

Mrs. Grant: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

224 Mrs. Grant: No.

The Court: Do you know anything about the facts of the case other than what you may have learned from the casual reading of the newspapers?

Mrs. Grant: Well, I heard the case years ago.

The Court: You got that from reading the newspapers?

Mrs. Grant: Yes.

The Court: Or from just casual discussion with friend?

Mrs. Grant: Yes.

The Court: Had you formed any opinion about the guilt or innocence of this defendant?

Mrs. Grant: Yes.

The Court: You did form an opinion at that time?

Mrs. Grant: Yes.

The Court: Has that opinion been changed in any way?

Mrs. Grant: No.

The Court: You feel that that opinion is such that it would prevent you from exercising your free and independent judgment in this case?

Mrs. Grant: Yes, sir.

The Court: All right, Mrs. Grant, you are excused.

The Marshal: Miss Anna Amelia Barth.

(The above named juror was duly sworn by the Clerk.)

225 The Court: Miss Barth, you heard this case explained to the other members of the panel?

Miss Barth: I did.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Miss Barth: No.

The Court: Do you know anything about the facts of the case other than what you may have learned through the casual reading of newspapers?

Miss Barth: No.

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The Court: That applies to the gentleman who also took his seat in the box. Either one of you have any opinion in this case which you formed from what you have read or heard in the past?

Miss Barth: No.

The Court: Is there any reason why either one of you cannot sit as a juror in this case and render a fair and impartial verdict in the case according to the law and evidence?

Miss Barth: I am no housekeeper.

The Court: You are not a housekeeper. Do you board?

Miss Barth: No.

The Court: Where do you live?

Miss Barth: 1277 Everett Avenue.

The Court: What is your arrangement there?

Miss Barth: I take care of my mother and father.

226 The Court: Don't you keep house for them?

Miss Barth: Yes, I keep house for them, but I am not a housekeeper.

The Court: You keep house for them, you run the house?

Miss Barth: That's right.

The Court: Any servants there?

Miss Barth: No.

The Court: You do all the work?

Miss Barth: We have a part time servant.

The Court: Part time servant?

Miss Barth: Yes.

The Court: Do you manage the servant?

Miss Barth: That's right.

The Court: You do keep house there, don't you?

Miss Barth: That's right.

The Court: I thought you said you didn't keep house.

Miss Barth: I thought you meant something else.

The Court: You may ask her.

Mr. Brown: Miss Barth, under the law as given to you by the Court, and if the facts testified to from the witness-stand justify it, would you recommend a death penalty in this case?

Miss Barth: No.

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227 The Court: All right, step aside Miss Barth.

The Marshal: Lee Grigsby.

(The above named juror was duly sworn by the Clerk.)

The Court: Those jurors that have been excused, if they want to leave, they can go, but before they leave please call at the Clerk's office for your certificate and at the Marshal's office for your compensation before you leave.

Mr. Grigsby, you heard me explain this case to the other members of the jury?

Mr. Grigsby: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Grigsby: No, sir.

The Court: Do you know anything about the facts of the case, other than what you may have obtained from casual reading of the papers?

Mr. Grigsby: Well, Your Honor, I have discussed it on several occasions and I have got a certain amount of doubt in my mind. I just don't believe that I would be qualified to serve as a juror in this case.

The Court: You feel that you now have certain views about it that would carry into the case that would have to be overcome by evidence?

Mr. Grigsby: I believe so.

228 The Court: All right, Mr. Grigsby, step aside.

The Marshal: William Selke.

(The above named juror was duly sworn by the Clerk.)

The Court: Mr. Selke, you understand what this case is about?

Mr. Selke: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Selke: No, sir.

The Court: Do you know anything about the facts of the case, other than what you may have learned from casual reading of the papers or talking with people?

Mr. Selke: Very little I have heard about the case.

The Court: Very little you have heard about it?

Mr. Selke: Yes, sir.

The Court: Have you any opinion about the guilt or

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innocence of this defendant at all?

Mr. Selke: None whatever.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Selke: I think I can be fair.

The Court: Mr. Brown.

Mr. Brown: Mr. Selke, under the law as given to you by the Court, and if the facts testified to from the witness-stand justify it, would you recommend a death
229 penalty in this case?

Mr. Selke: Yes, sir.

Mr. Brown: That's all I care to ask him.

Mr. Hogan: Where do you live, Mr. Selke?

Mr. Selke: 813 S. 45th.

Mr. Hogan: What is your occupation?

Mr. Selke: I do collecting for different concerns.

Mr. Hogan: Are you married?

Mr. Selke: Yes, sir.

Mr. Hogan: Have you any children?

Mr. Selke: No, sir.

Mr. Hogan: To what church do you belong?

Mr. Selke: St. Paul's Evangelical Church.

Mr. Hogan: Mr. Beaven, what is your business?

Mr. Beaven: Farmer.

Mr. Hogan: How many acres do you have?

Mr. Beaven: My brother and I have 186.

Mr. Hogan: Do you receive any cut-out payments?

Mr. Beaven: Yes, under the Triple A.

Mr. Hogan: Mr. Selke and Mr. Beaven, are either of you related by the ties of blood or marriage to either a member of the Speed, Sackett or Stoll families?

Mr. Selke: No, sir.

Mr. Hogan: Have you any acquaintanceship or social or civic or religious contact with any members of the
230 Stoll, Speed or Sackett families?

Mr. Selke: No, sir.

Mr. Hogan: Are you an officer, stockholder or director in any company in which those families or any members thereof have any interest?

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Mr. Selke: No, sir.

Mr. Hogan: Have you read any newspaper articles about this case?

Mr. Selke: I haven't.

Mr. Beaven: I have.

Mr. Hogan: Mr. Beaven, from the reading of those newspaper or magazine articles, did you formulate any opinion as to the guilt or innocence of this defendant?

Mr. Beaven: I may have had an opinion at the time I read it.

Mr. Hogan: Was that an unfavorable opinion to this defendant?

Mr. Beaven: Well, I suppose it was.

Mr. Hogan: Have you changed that opinion in any wise?

Mr. Beaven: Well, evidence could change it, that would be all.

Mr. Hogan: But you, yourself, have not changed it in your own mind?

Mr. Beaven: No, not at the present I haven't.

231 Mr. Hogan: Mr. Selke, did you read any newspaper or magazine article about this case?

Mr. Selke: No, sir.

Mr. Hogan: Never read a thing on earth about it?

Mr. Selke: No, sir.

Mr. Hogan: Never?

Mr. Selke: No, sir.

Mr. Hogan: Do you read newspapers?

Mr. Selke: Very little.

Mr. Hogan: Are you now, addressing my remarks and my questions to both of you, employed or have you ever been employed by the United States Government?

Mr. Selke: I haven't.

Mr. Beaven: No, sir.

Mr. Hogan: Are you now, or have you ever been a stockholder or bond holder, or office holder of any department or branch of the United States Government?

Mr. Selke and Mr. Beaven: No, sir.

Mr. Hogan: Are you a housekeeper, Mr. Selke?

Mr. Selke: Yes, sir.

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Mr. Hogan: Do you or either of you receive any bonus or remuneration of any kind from the Government?

Mr. Selke: No, sir.

Mr. Beaven: Only the Triple A.

Mr. Hogan: Only the Triple A as to you, Mr. Beaven.
 232 Are you, or either of you, a member of any board, such as a draft board or commission of the United States Government?

Mr. Selke: No.

Mr. Beaven: I was on a committee for the transportation of livestock in Marion County.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime who interposes insanity as a defense?

Mr. Beaven: No, sir.

Mr. Hogan: You, Mr. Selke?

Mr. Selke: No, sir.

Mr. Hogan: Do you have, or will you have, or would you have, any prejudice against one interposing a plea of insanity as a defense who thereafter makes a recovery and is restored to sanity?

Mr. Selke: No, sir.

Mr. Beaven: No, sir.

Mr. Hogan: If you should after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt either as to the capacity of this defendant to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt in favor of this defendant and acquit him?

Mr. Selke and Mr. Beaven: Yes, sir.

Mr. Hogan: Have you, or either of you, ever sat upon any jury in any court or tribunal which either recom-
 233 mended or imposed the death penalty?

Mr. Selke: No, sir.

Mr. Hogan: Have you, Mr. Beaven?

Mr. Selke: No, sir.

Mr. Hogan: Do you believe that because this defendant has been indicted, that that is some evidence of his guilt, or would the fact that this defendant has been indicted create in your mind a prejudice, bias or suspicion

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that he may be guilty?

Mr. Beaven: I would hold him innocent until proven guilty.

Mr. Selke: So would I.

Mr. Hogan: Beyond a reasonable doubt?

Mr. Beaven: Yes, sir.

Mr. Hogan: I mean by that, would you hold him innocent and vote to acquit him unless the Government proved their case against him beyond a reasonable doubt?

Mr. Beaven: Yes, sir.

Mr. Hogan: Mr. Brown, you may have them.

Mr. Brown: We accept the jury.

Mr. Hogan: Mr. Brown, may I see you at the Judge's desk?

(Counsel conferred with the Court out of the hearing of the Jury.)

The Court: The defense motion to excuse Mr. Beaven for cause is sustained. Any challenge by the defendant?

234 Mr. Hogan: I would like to ask Mr. Selke another question or two, if Your Honor will permit. Mr. Selke, are you connected with the Fleming-DeLeuil Collection Agency?

Mr. Selke: My wife is.

Mr. Hogan: Is that in the Realty Building?

Mr. Selke: In the Starks Building.

Mr. Hogan: Is she an officer of that concern?

Mr. Selke: No, sir, works on a commission

Mr. Hogan: There is a Mr. Fleming who is in the collection business, or was, in the Realty Building. Do you know anything about him?

Mr. Selke: That's Mr. Fleming's brother.

Mr. Hogan: Your wife is associated with Mr. Fleming's brother that I know in the Realty Building. Your concern is located in the Starks Building.

Mr. Selke: Yes, sir.

Mr. Hogan: Would you mind telling us your age, Mr. Selke?

Mr. Selke: My age is 76.

Mr. Brown: I am going to object to asking how many more jurors we have.

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Mr. Hogan: I can count^d them on the page, Mr. Brown, as readily as I can ask the Marshal.

Mr. Brown: I object to asking who the other jurors are.

Mr. Hogan: I am not inquiring who they are, **235** but the number. I can count them from here and get the same information.

The Court: We have some more coming tomorrow.

The Marshal: Vacate the box, Mr. Selke. Thomas Shelburne. Mrs. Mina Chamblee—I believe that's the lady who tells me her name has been changed since she was drawn.

(The two last above named jurors called by the Marshal were duly sworn by the Clerk.)

The Court: You two who have just taken the box are familiar with the charge which this indictment makes against the defendant, Thomas Henry Robinson, Jr.

Either one of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Either one of you know anything about the facts of this case other than what you may have acquired through casual reading or conversation with people?

Mrs. Chamblee: No, sir.

The Court: How about you, sir?

Mr. Shelburne: I have discussed the case.

The Court: Has that caused you to have any fixed opinion in the case about the guilt or innocence of this defendant?

Mr. Shelburne: Yes.

The Court: Is that opinion such that you feel that you enter this case under some feeling of prejudice against him?

236 Mr. Shelburne: Yes, sir.

The Court: All right, sir, step down. What was your name?

Mr. Brown: That's Mr. Shelburne.

The Marshal: Charles P. Hayden.

(The above named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mr. Hayden, you heard me explain the

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case to the other members of the panel?

Mr. Hayden: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Hayden: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have learned through casual reading of the newspapers?

Mr. Hayden: Judge, at the time this happened I was working at the Louisville Cement Company.

The Court: Merely working there may mean lots of things. Did you hear the case discussed over there?

Mr. Hayden: How is that?

The Court: Did you hear the case discussed over there?

Mr. Hayden: I did.

The Court: Did it make any impression upon you?

237 Mr. Hayden: Yes, sir.

The Court: Cause you to entertain an opinion about the guilt or innocence of this defendant?

Mr. Hayden: Yes, sir.

The Court: Has that opinion continued to the present time?

Mr. Hayden: Yes, sir.

The Court: Hasn't been changed any?

Mr. Hayden: No, sir.

The Court: You feel that if you entered into the trial of this case as a juror that there would be a certain opinion that would have to be overcome by the evidence in this case?

Mr. Hayden: I wouldn't change my opinion.

The Court: How is that?

Mr. Hayden: I wouldn't change my opinion.

The Court: You wouldn't?

Mr. Hayden: No, sir.

The Court: All right, step down.

The Marshal: Mrs. Elswick.

(The last above named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mrs. Elswick, you understand the general nature of this case. You heard it explained to the other

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members of the panel.

Mrs. Elswick: Yes, sir.

238 The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Elswick: No, sir.

The Court: Do you know anything about the facts in the case other than what you have learned from casual reading in the newspapers?

Mrs. Elswick: No, sir.

The Court: Have you formed any opinion in this case as to the guilt or innocence of this defendant?

Mrs. Elswick: I have not.

The Court: I ask you and the other lady who took the box, is there any reason why either one of you cannot sit as a juror in this case and render a fair and impartial verdict in accordance with the law and evidence?

Mrs. Chamblee: I am not a bonafide housekeeper, Your Honor.

The Court: Where do you live?

Mrs. Chamblee: I live at 1160 Bardstown Road with my mother and father.

The Court: Do you keep house for them or not?

Mrs. Chamblee: No, I do not.

The Court: They furnish your expenses there?

Mrs. Chamblee: Yes, sir.

The Court: What does counsel say?

Mr. Brown: It is all right with me.

239 Mr. Hogan: I think by her own admission she is not a housekeeper.

The Court: All right, she may be excused. Let's have your name, if you will, please. I understand you have changed it.

Mrs. Chamblee: The name now is Allen—A-l-l-e-n.

The Marshal: Mrs. Elizabeth Lyverse.

Mrs. Lyverse: Here.

(The last above named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mrs. Lyverse, are you a housekeeper?

Mrs. Lyverse: Yes, sir.

The Court: You have heard me explain this case to

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the other members of the panel. Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. Lyverse: No.

The Court: Do you know anything about the facts of the case other than what you have learned through the casual reading of the papers?

Mrs. Lyverse: No, sir.

The Court: Have you formed any opinion in the case?

Mrs. Lyverse: No.

The Court: Is there any reason why you could not sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

240 Mrs. Lyverse: No.

The Court: All right, Mr. Brown.

Mr. Brown: Mrs. Elswick, under the law as given to you by the Court, and if the facts as testified from the witness-stand warrant it, would you recommend the imposition of a death penalty in this case?

Mrs. Elswick: Yes.

Mr. Brown: Mrs. Lyverse, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend the sentence of death in this case?

Mrs. Lyverse: Yes.

Mr. Brown: I pass them to you.

Mr. Hogan: Mrs. Elswick, where do you reside?

Mrs. Elswick: Middletown.

Mr. Hogan: Are you married?

Mrs. Elswick: Yes, sir.

Mr. Hogan: What is the business of your husband?

Mrs. Elswick: Architect.

Mr. Hogan: With what religious denomination are you affiliated?

Mrs. Elswick: Unitarian.

Mr. Hogan: Have you any children?

Mrs. Elswick: One daughter.

Mr. Hogan: Mrs. Lyverse, where do you live?

241 Mrs. Lyverse: In Strathmoor, Winston Avenue.

Mr. Hogan: What is the business or profession of

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your husband?

Mrs. Lyverse: He is a representative for the International Shoe Company.

Mr. Hogan: Are you a housekeeper?

Mrs. Lyverse: Yes.

Mr. Hogan: How long have you lived in Louisville?

Mrs. Lyverse: All my life.

Mr. Hogan: Do you know Mr. Brown or Mr. Inman?

Mrs. Lyverse: No.

Mr. Hogan: Mrs. Elswick, do you know either of those two gentlemen?

Mrs. Elswick: No, sir.

Mr. Hogan: Now, do you two ladies, Mrs. Elswick and Mrs. Lyverse, or either of you, have any acquaintance-ship, social, religious, charitable or any contacts with the members of the Stoll, Speed or Sackett families?

Mrs. Lyverse: I do not.

Mrs. Elswick: I do not.

Mr. Hogan: Do you know any members of those families?

Mrs. Lyverse: No.

Mr. Hogan: Do you or any member of your family have any stock in any company, corporation or association in which the members of the Stoll, Speed and Sackett families are interested?

242 Mrs. Elswick: No, sir.

Mrs. Lyverse: No.

Mr. Hogan: Have you, or either of you, or any member of your household, been employed by the Stoll Oil Company or by the companies or any of them owned and controlled by the Speed, Stoll or Sackett families?

Mrs. Elswick: No, sir.

Mrs. Lyverse: No, sir.

Mr. Hogan: Does there exist in you such a state of mind in regard to this case or this defendant that you cannot try this case impartially and without prejudice to the substantial rights of this defendant?

Mrs. Lyverse: No.

Mrs. Elswick: No.

Mr. Hogan: Have you, or either of you, at any time,

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read in the newspapers or magazines an account of this crime?

Mrs. Lyverse: Yes, I have seen articles on it and read them.

Mr. Hogan: Have you done that, Mrs. Elswick?

Mrs. Elswick: Yes.

Mr. Hogan: Did you formulate any opinion after having read those newspaper articles?

Mrs. Lyverse: I didn't.

Mr. Hogan: Did you, Mrs. Elswick?

Mrs. Elswick: No, sir. I accepted them as news,
243 that's all.

Mr. Hogan: You formulated no opinion as to the guilt or innocence of this defendant?

Mrs. Elswick: No.

Mrs. Lyverse: I guess I probably accepted the situation as it seemed to be accepted by the public at that time, I suppose.

Mr. Hogan: How was it accepted by the public at that time?

Mrs. Lyverse: Well, he served a sentence.

Mr. Hogan: Did you accept that, that he was guilty?

Mrs. Lyverse: I suppose I did.

Mr. Hogan: And you have carried that conviction down to the present time?

Mrs. Lyverse: Not with what my understanding of what this trial is about.

Mr. Hogan: At one time you entertained a conviction that he was guilty?

The Court: No, she didn't say conviction.

Mr. Brown: No, she didn't say that.

Mr. Hogan: I will ask you if you did then, Mrs. Lyverse?

Mrs. Lyverse: I stated it exactly the way I felt. I accepted it as news at that time and accepted the fact that he served a sentence, that he was generally con-
244 ceded to be guilty of that offense at that time.

Mr. Hogan: Well, from the fact that you did receive it in that fashion or in that light, did you formulate an opinion of your own?

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Mrs. Lyverse: I never thought any more about it.

The Court: You have an open mind on the question now?

Mrs. Lyverse: I do, Your Honor.

Mr. Hogan: Are you, or have you been, or any member of your household been, a stockholder, office holder or director of any of the United States Government corporations or agencies?

Mrs. Lyverse: Are you addressing me or Mrs. Elswick?

Mr. Hogan: Both of you.

Mrs. Lyverse: I have not.

Mrs. Elswick: No, sir.

Mr. Hogan: Did you, or either of you, now or have you been at any time, an employee of the United States?

Have you or any member of your household or families had any business connections or relationship with the United States Government?

Mrs. Lyverse: I have a son training as a pilot in the Air Corps.

Mr. Hogan: I said business relationship, not military affiliation.

245 Mrs. Lyverse: That's all.

Mr. Hogan: Are you now, or have you been at any time, a member of any board or commission?

Mrs. Lyverse: No.

Mr. Hogan: Have you or either of you served upon a jury in this court within the past twelve months, or upon a jury in any circuit court within the past twelve months?

Mrs. Lyverse: No, sir.

Mr. Hogan: Mrs. Elswick?

Mrs. Elswick: No, sir.

Mr. Hogan: Do you, or either of you, entertain any prejudice against one charged with a crime who interposes insanity as a defense?

Mrs. Lyverse: No.

Mr. Hogan: Do you have, or will you have, any prejudice against one interposing a plea of insanity as a defense who thereafter makes a recovery and is restored to sanity?

Mrs. Lyverse: No.

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246 Mr. Hogan: If you should, after hearing the evidence and the law as given to you by His Honor, entertain a reasonable doubt, either as to the capacity of the defendant to commit any of the acts charged in the indictment or as to his guilt, would you resolve that doubt as to this defendant and acquit him?

Mrs. Lyverse: I would.

Mr. Hogan: Have you ever sat upon a jury in any court which either recommended or imposed the death penalty?

Mrs. Lyverse: No, I haven't.

Mr. Hogan: Do you believe that because this defendant has been indicted that that is some evidence of his guilt, or would the fact that this defendant has been indicted create in your mind a prejudice, bias or suspicion that he may be guilty?

Mrs. Lyverse: No.

Mr. Hogan: I will pass them to you, Mr. Brown.

The Marshal: Mrs. Lyverse, vacate the box. Mrs. Jessie McCullough.

(Mrs. McCullough was sworn by the Clerk.)

The Court: Mrs. McCullough, you heard me outline the general character of this case which we are about to enter into?

Mrs. McCullough: Yes, sir.

The Court: You understand what it is about?

247 Mrs. McCullough: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mrs. McCullough: No, sir.

The Court: Do you know anything about the facts in the case?

• Mrs. McCullough: No, sir.

The Court: Have you formed any opinion in the case one way or the other?

Mrs. McCullough: No, sir.

The Court: Are you a housekeeper?

Mrs. McCullough: No, sir, I am not. I board. I sold my home.

The Court: You do not have any part in the manage-

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ment or running of the house in any way?

Mrs. McCullough: Absolutely not.

The Court: All right, Mrs. McCullough, stand aside.

The Marshal: Mrs. Mary Helm.

(Mrs. Helm was sworn by the Clerk.)

The Court: Mrs. Helm, are you a housekeeper?

Mrs. Helm: Yes, I am.

The Court: You understand what this case is about?

Mrs. Helm: I do.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

248 Mrs. Helm: No, sir.

The Court: Do you know anything about the facts of the case?

Mrs. Helm: I do not.

The Court: Have you formed any opinion in the case one way or the other?

Mrs. Helm: No, sir.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict?

Mrs. Helm: No.

The Court: All right, Mr. Brown.

Mr. Brown: Mrs. Helm, under the law as given to you by the Court, if the facts as testified to from the witness stand so justify, could you vote for the imposition of the death penalty?

Mrs. Helm: I could not.

The Court: All right, Mrs. Helm, step down.

The Marshal: Raymond Jones.

(Mr. Jones was sworn by the Clerk.)

The Court: Mr. Jones, you have heard this case outlined to the other members of the panel?

Mr. Jones: Yes, sir.

The Court: Do you understand what the case is about?

Mr. Jones: Yes, sir.

249 The Court: Do you know anything about the facts in this case other than what you may have learned from a casual reading of the papers?

Mr. Jones: No, sir.

The Court: Do you know any members of the family?

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Mr. Jones: No, sir.

The Court: Do you know anyone who is connected with the case in any way?

Mr. Jones: No, sir.

The Court: Have you formed any opinion one way or the other about the guilt or innocence of the defendant?

Mr. Jones: No, sir.

The Court: Are you a housekeeper?

Mr. Jones: Yes, sir.

The Court: Is there any reason why you cannot take your seat in the jury box and render a fair and impartial verdict according to the law and the evidence?

Mr. Jones: No, sir.

The Court: Mr. Brown?

Mr. Brown: Mr. Jones, under the law as given to you by the Court, if the facts as testified to from the witness stand justified it, would you vote for the imposition of the death penalty?

Mr. Jones: No, sir.

The Court: You would not?

250 Mr. Jones: No.

The Court: All right, step aside.

The Marshal: That is all.

The Court: Is there any member of the jury panel in the courtroom who has not been called into the box?

(No answer.)

The Court: The Marshal advises that that exhausts the jurors he has available for the present. We have some more coming tomorrow morning at 9:30.

I will admonish the present members of the jury not to discuss this matter among yourselves or with anyone or permit anyone to talk to you or in your presence about it. Avoid contact with anyone who is interested in this case in any way.

We will adjourn until tomorrow morning at 9:30 a. m. The Marshal will have the custody of the jury.

At this point the further proceedings in this case was adjourned until 9:30 a. m. Tuesday morning, November 30, 1943, at which time Court convened, and the following proceedings were had:

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251 Convened pursuant to adjournment on Tuesday morning at 9:30 a. m., November 30, 1943, and the following proceedings were had:

The Court: I believe there was one juror who was supposed to be here yesterday that couldn't come. I don't know whether she is here today or not—Mrs. Inez Hutchison.

Mr. Inman: I am informed that Mrs. Hutchison is in the Mayo Hospital.

The Court: They told me that she couldn't come yesterday but would be here today.

Mr. Inman: She is not able to be here.

The Court: All right; strike her name.

The Marshal: All right.

(At this point the Marshal calls the new jurors who have been summoned.)

The Court: Now those of you whose names have just been called, you have been subpoenaed here in order to enable us to select three more jurors to complete the jury in the case which will start immediately thereafter. The Jury will consist, as in all cases, of 12 persons and there will be two alternates to take the place of any juror who might get sick during the trial and not be able to continue. During the period of yesterday we were unable to get more than 11 jurors of the regular 12 jurors. That means
252 that there still remains to be selected by counsel and the Court one regular juror and 2 alternates.

Accordingly, out of the ones who are here this morning, 3 of you will be selected to sit in this case.

The case will probably take a week or maybe longer. It depends on how fast we go. While the case is in progress the jury will be kept together and separated from the public. They will spend the time at the Brown Hotel where quarters have been arranged for them.

I realize that some of you, probably a number of you, may not find jury service right now convenient. It may interfere with your business. It may interfere with your personal pleasure or wishes, but that is usually the case and that is something that we cannot help. We must have qualified jurors to try this case. It is a part of the duty

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of every citizen of this State and of this country to serve as a juror when his time comes just as much as it is the duty of any other male citizen to serve as a soldier when his time comes to do so and, regardless of the fact that it is not convenient or it disturbs your business arrangement, it has to be done. If you do not do it, someone else has to do it.

We will go into the various reasons why some of you do not want to serve in a few minutes. I will say first that there are certain qualifications that jurors must have
 253 and we will see if all of the ones whose names have just been called are so qualified.

First, the statute says you must be a citizen of the United States and of the State of Kentucky. I assume that all of you are citizens. If anyone is not a citizen, please let that be known now.

Mr. McGruder: I don't know if I am a citizen or not. I moved to Missouri about a year ago with my son.

The Court: You are a natural born American?

Mr. McGruder: Yes, this is my home in Louisville.

The Court: You have always lived in Louisville and you intend to move back to Louisville?

Mr. McGruder: I got the telegram yesterday morning.

The Court: Where?

Mr. McGruder: St. Louis.

The Court: Do you live in St. Louis at the present time?

Mr. McGruder: Yes, I am staying with my son.

The Court: That is your residence?

Mr. McGruder: I am staying with him until the war is over.

The Court: Do you have any residence here?

Mr. McGruder: No.

The Court: Do you own property here?

Mr. McGruder: I did at one time but I don't now.
 254 I didn't know what else to do.

The Court: Where do you vote?

Mr. McGruder: That is the question. I took a civil service examination a while back and I claimed Kentucky as my home.

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The Court: Where do you claim your residence now? You are the one who knows about that.

Mr. McGruder: I am trying to claim Kentucky.

The Court: It is not a question of what you are trying to claim. It is what the facts are. Have you moved away from here permanently or is it your intention to return here and make it your home?

Mr. McGruder: That is my intention.

The Court: You have never made Missouri your home?

Mr. McGruder: Only temporarily.

The Court: And what is your name?

Mr. McGruder: McGruder.

The Court: Now, is there anyone else who is not a citizen and resident of the Western District of Kentucky?

It is likewise required that all jurors be 21 years of age and a housekeeper of this District. Is there anyone here who is not 21 years of age? or who is not a housekeeper?

Mr. Gates: I don't know.

The Court: What is your name?

255 Mr. Gates: Richard Gates.

The Court: You are the one who wrote me the letter?

Mr. Gates: Yes, sir.

The Court: All right, Mr. Gates, you may be excused.

The Court has been advised in different ways that a number of the people who were subpoenaed here today are sick and incapacitated. Doctors' certificates have been supplied for most of those, one or two of them I believe are even in the hospital. Of course, it is impossible for them to serve. And that reduces the number of jurors we expected to have. Accordingly, it looks like it is going to be necessary to have most of you here today for possible jury service.

I realize that some of you may find that inconvenient. Inconvenience is not going to be an excuse. If it is going to work a real hardship on you, then there may be some reason to excuse you but I can say now, as you can probably realize, that we need you here just as badly as someone else needs you somewhere else. We are trying to get

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the case tried and a jury must be had. This case is one that should be tried, and the Court is anxious to get it tried, and I believe all of the parties who are interested in it are likewise anxious to get it started.

However, if there are any of you here by reason
 256 of your personal situation at home—it might be that there are some ladies here who have infant children and have no one who can take care of them if they are required to be here for several days, or if someone in the family has sickness of such a nature that you cannot leave them, or that the business situation is so critical that they cannot be spared for a few days, those things will be considered but merely because it will be inconvenient will not be any excuse that the Court will look on with favor.

If there is anyone here who feels that it will be impossible for them to serve, I would like to hear from them now?

Mr. Haycraft: I am a farmer and there is no one there to do the work.

The Court: You are a farmer?

Mr. Haycraft: Yes, sir.

The Court: Where?

Mr. Haycraft: Breckenridge County.

The Court: How large a farm?

Mr. Haycraft: 250 acres.

The Court: What help have you?

Mr. Haycraft: My wife, and she has got the rheumatism and she is not able to attend to the stock.

The Court: Any one else?

Mr. Haycraft: No one else. I have a letter here
 257 from the doctor about my wife. Do you want to see it?

The Court: No—you look healthy. Have you got any neighbors who can help you out?

Mr. Haycraft: No, sir. We got a little girl to stay with her last night.

The Court: All right. Now what is your name?

Mr. Gibson: J. W. Gibson, Willisburg. I have a doctor's certificate. I am sick and not able to sit for a long time.

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The Court: Let me see the certificate?

(Mr. Gibson handed the certificate to the Court.)

The Court (After reading it): I don't know that that will be sufficient. We may have to use you anyhow.

Who is the next?

Mr. Early: J. S. Early. I have a certificate.

The Court: All right, let me see it. You are in the same situation as Mr. Gibson. I think maybe you can serve, Mr. Early. These doctors say that they do not think you are able to sit on a jury, but it seems to me you both look pretty able-bodied.

What is your name?

Mr. Houchins: Sam Houchins.

The Court: All right, Mr. Houchins.

Mr. Houchins: I am connected with the Bloomfield warehouse and General Manager, and I have charge
258 of all of the hiring of over 100 men and we are just starting up our business now, and it would be very inconvenient and hard for me to get off.

The Court: Inconvenient?

Mr. Houchins: I don't mean that—nobody to take my place.

The Court: Well what would happen if you were sick?

Mr. Houchins: It would be very serious.

The Court: Would the warehouse close up?

Mr. Houchins: Probably not.

The Court: All right, take your seat.

Who is next?

Mrs. McClarty: I would be glad to serve if I could go home every night, but I am diabetic and I have to take insulin night and morning and I have to be at home so my husband can give it to me.

The Court: Can't you have it at the hotel?

Mrs. McClarty: My husband gives it to me.

The Court: Can't he come to the hotel and give it to you there?

Mrs. McClarty: That will be all right if he will do that.

The Court: All right. Who is next?

Mr. Attkisson: I have a letter for you.

(At this point Mr. Attkisson goes up to the bench

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259 and talks to the Court out of hearing.)

The Court: Anyone else?

Mr. Dacon: Earl Dacon.

The Court: What is your situation?

Mr. Dacon: I am a farmer and I have a mother 84 years old today, and I have a sick wife at home who has been sick with rheumaitism eleven weeks under the doctor's care, and I have 90 head of stock with only one tenant and owing to the water situation it is impossible to get anyone to help.

The Court: How old are you?

Mr. Dacon: 58.

The Court: Is that all?

Mr. McTighe: J. M. McTighe.

The Court: What is your situation?

Mr. McTighe: I have a letter here.

The Court: Are you sick?

Mr. McTighe: No (handing letter to the Court).

The Court: That is another situation. I don't know what would happen if you were to die. That company would be in a bad fix, wouldn't it?

Mr. McTighe: We had another man but he was drafted.

The Court: The company would have to run if you were not there, wouldn't it?

Mr. McTighe: Yes, sir.

260 The Court: Well, we will see about it.

Anyone else?

Mr. Money: Arle C. Money.

The Court: And what is your situation?

Mr. Money: We just sold our farm and we have to give possession the first of the year, and we have to have a sale and we have about 8 acres of tobacco to strip, too.

The Court: Who is "we"?

Mr. Money: My brother and myself.

The Court: Can't he do it?

Mr. Money: Not hardly.

The Court: When did you serve here last?

Mr. Money: In the spring sometime.

The Court: Not within the last year?

Mr. Money: No.

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The Court: And what is your name?

Mr. McElroy: Rob McElroy.

The Court: What is your situation?

Mr. McElroy: I am on a farm six miles out with a wife and 2 small children, with the work to do and the tobacco crop to strip out.

The Court: How large a farm?

Mr. McElroy: 230.

The Court: What help have you?

Mr. McElroy: I have 2 tenants but they are not
 261 hired men—one of them does not live on the place, and they don't tend to the stock.

The Court: Then they can take care of the stock can't they while you are gone?

Mr. McElroy: I left word there for them to but I don't know that they will at all, and I have not made any arrangements for my wife and children.

The Court: What kind of arrangements?

Mr. McElroy: Arrangements for them to stay somewhere. They will not stay there alone.

The Court: Can they come to Louisville?

Mr. McElroy: Oh yes.

The Court: Or go to some friend's house?

Mr. McElroy: Yes, they could move to Springfield.

The Court: You don't have to be there for them to do that, do you?

Mr. McElroy: It is not absolutely necessary.

The Court: All right. Is that all?

Mr. Crain: John W. Crain.

The Court: What is your situation?

Mr. Crain: I have a sick child who has been sick ever since the 17th of September and he has convulsions and he has them so badly we have to give him shots and none of the rest of the family can give him the shots except me, and I live 8 mile from town and I have a large farm
 262 and no one to see after it.

The Court: How large a farm?

Mr. Crain: 140 acres.

The Court: How much help do you have?

Mr. Crain: Only small boys.

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The Court: How small?

Mr. Crain: One 12 and the other 14.

The Court: They go to school, do they?

Mr. Crain: Yes, sir.

The Court: All right, have a seat.

Now, is there another man?

Mr. Crume: Logan Crume.

The Court: What is your situation?

Mr. Crume: I am a farmer.

The Court: How big a farm do you run?

Mr. Crume: 415.

The Court: Where is it?

Mr. Crume: 2 miles from Springfield.

The Court: How much help have you?

Mr. Crume: 2 tenants.

The Court: Couldn't they get along without you for a few days?

Mr. Crume: They might if I could get them to haul the stock water.

The Court: Can't you get them to do that?

263 Mr. Crume: Neither one of them can drive a truck and we have to use a truck for that. If they could get a team to haul it by wagon they could.

The Court: All right, have a seat. And what is your name?

Mr. Argenbright: Russell Argenbright.

The Court: What is your situation, Mr. Argenbright?

Mr. Argenbright: I own and operate a service station at Lebanon Junction and I don't have anybody to work for me, and I would have to close up. I have closed up 2 days already.

The Court: What hours do you operate down there?

Mr. Argenbright: 8 in the morning until about 8:30 at night.

The Court: Are you there all that time?

Mr. Argenbright: Yes, except an hour for dinner.

The Court: What do you do on that hour? Close up?

Mr. Argenbright: Yes, close up.

The Court: You haven't any help at all?

Mr. Argenbright: I did have up until 2 weeks ago and

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the boy quit and went to work on a mail truck.

The Court: All right, have a seat.

What is your name?

Mr. Whitehead: Fred Whitehead.

The Court: What is your situation, Mr. Whitehead?

Mr. Whitehead: I have charge of the Lebanon
264 Junction Water Works, and I am the sole employee.

The Court: What would Lebanon Junction do if you got sick?

Mr. Whitehead: I don't know. I am the only one that has ever operated the plant. The water bills are due now tomorrow, and we are supposed to be checking the meters today.

The Court: Do you do all of that?

Mr. Whitehead: Yes, sir.

The Court: Do you read all the meters and send out all the water bills?

Mr. Whitehead: Yes, sir.

The Court: Don't you have any clerical assistance?

Mr. Whitehead: No, sir.

The Court: Do you have a Mayor down there?

Mr. Whitehead: Yes.

The Court: What is the Mayor going to do if you got sick sometime?

Mr. Whitehead: I don't know.

The Court: Hasn't that thought ever occurred to him?

Mr. Whitehead: He doesn't work for the city—he is a railroad man.

The Court: He is the Mayor of Lebanon, isn't he?

Mr. Whitehead: Yes—and he has a sick wife, too.

The Court: All right, take a seat.

265 The Marshal: I will call those who did not answer (calling jurors).

The Court: Now those of you who have asked to be excused, I would like to excuse all of you if we could. I think what we will do is to give you a tentative excuse and ask you to still stay in the courtroom. If we can get our jury with what is remaining, we will not have to have you, but if we cannot get a jury with what is remaining, we will have to call on some of you at least, to help out.

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Accordingly, you will be temporarily excused, but you should remain here in the courtroom to see if we need you before the morning or the day is over.

Mr. Marshal, those people who are in Louisville who did not answer, W. H. Bowman, Jr., J. N. Francis—I wish you would get in touch with them and find out why they are not here.

The Marshal: Yes, sir, there are 5 of them here in Louisville.

The Court: Is counsel ready to proceed?

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Yes, Your Honor.

The Marshal: R. L. Woolfolk.

(Mr. Woolfolk was sworn by the Clerk.)

The Court: Mr. Woolfolk, I will state this case to you and also to the other members of the jury panel so
 266 that you can all listen at this time and understand what the case is about and the general nature of the questions that might be asked you and the other prospective jurors.

This indictment was returned by the Grand Jury for the Western District of Kentucky on October 20, 1934, against the defendant, Thomas Henry Robinson, Jr., who is sitting there in the middle at the table to my left.

The second count of his indictment, which is the only count that this jury will be concerned with, charges that on or about the 10th of October 1934, in Jefferson County, Kentucky, the defendant, Thomas Henry Robinson Jr., did transport from Louisville, Kentucky, to Indianapolis, Indiana, Mrs. Alice Stoll who was not a minor and who was not transported by her parents but who had been unlawfully seized and kidnapped and carried away from her home by the defendant and held for ransom or reward; and that the defendant Robinson did, while Mrs. Alice Stoll was in his custody, beat and harm her and did not liberate her unharmed.

I might say, also, as I told the other members of the panel yesterday, the jurors should keep this in mind in answering the questions which will be asked them, that in the Federal Court the procedure is different from what it

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is in the State court. In the State court the jury usually not only determines whether or not the defendant is
267 guilty or not guilty, but if they return a verdict of guilty the jury fixes the punishment. However, in the Federal Court it is usually within the province of the jury to determine only whether or not the defendant is guilty or not guilty, and if the jury returns a verdict of guilty, it is the duty of the Court to fix the punishment.

Now, the particular statute which is involved in this case, the federal statute, changes that just a little and provides that although it is still the duty of the Court to fix the punishment in the event a verdict of guilty is returned, but the jury may, if they think it is advisable in their judgment and discretion, recommend the death penalty. Such a recommendation is not binding upon the Court but it can be made by the jury and the Court can accept it if it feels that such recommendation, if made, should be accepted.

Accordingly, that will probably be one of the questions which will be before the jury if and when the case goes to them for consideration. You will probably be asked by counsel whether or not, if the evidence warrants it and the law justified it, you would be willing to make such a recommendation, and in answering that question I wish you to know the law in the situation, viz: That such a recommendation can be made by the jury which may or may not be accepted by the Court.

268 Likewise there are some general principles of law that might be brought to your attention by questions of counsel and about which the Court would instruct you at the end of the case, viz: that an indictment which has been brought by a Grand Jury is not to be considered as evidence in the case; it is not to be considered by a juror as evidence of the defendant's guilt, but is to be considered merely as the charge of the government, and to be disregarded as evidence in any way upon the consideration of the case.

Also, it is a fundamental principle in criminal law, both in the federal court or any other court, that if there is any reasonable doubt in the mind of a juror about the guilt of the defendant, such doubt should be resolved in favor of

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the defendant, and a verdict of not guilty returned. The Court will so advise you more in detail when the instructions are given; but in view of the questions which have been asked other jurors, and which will probably be asked these jurors, I think it is advisable for you jurors to know those principles before we begin to ask the questions.

Now, are you related in any way by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Woolfolk: No, sir.

The Court: Do you know anything about the
269 facts of this case other than what you might have acquired from a casual reading of the newspapers?

Mr. Woolfolk: No, sir.

The Court: You have had no connection with any of the parties interested in this case?

Mr. Woolfolk: No, sir.

The Court: You have formed no opinion in the case at all?

Mr. Woolfolk: No.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Woolfolk: No, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Where are you from?

Mr. Woolfolk: Brandenburg.

Mr. Brown: Meade County?

Mr. Woolfolk: Yes, sir.

Mr. Brown: What is your business?

Mr. Woolfolk: Farming.

Mr. Brown: What size farm do you have?

Mr. Woolfolk: 125.

Mr. Brown: Are you married?

Mr. Woolfolk: Yes.

270 Mr. Brown: What family do you have?

Mr. Woolfolk: A wife and 5 children.

Mr. Brown: How long have you lived in Meade County?

Mr. Woolfolk: All my life—born there.

Mr. Brown: Mr. Woolfolk, if under the law as given

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to you by the Court, and if the facts as testified to from the witness stand justify it, could you recommend the death penalty in this case?

Mr. Woolfolk: Well I don't know.

Mr. Brown: Well, let's see—perhaps I didn't phrase the question properly.

The Court: Would you have any conscientious scruples against recommending the death penalty if the law authorizes the jury to do so and the facts and evidence as given from the witness stand justify it? This does not mean that you would have to do it, or that your recommendation would be accepted by the Court?

Mr. Woolfolk: No.

Mr. Brown: I pass them to you.

Mr. Hogan: Mr. Woolfolk, with what religious denomination are you affiliated?

Mr. Woolfolk: Methodist.

Mr. Hogan: What are the ages of your 5 children?

Mr. Woolfolk: The oldest is 17 and the youngest 271 is 4.

Mr. Hogan: Are you related by the ties of blood or marriage to any member of the Stoll or the Speed or Sackett families?

Mr. Woolfolk: No.

Mr. Hogan: Do you know any members of those three families?

Mr. Woolfolk: No.

Mr. Hogan: Have you, or any member of your family, ever had any business transactions with any members of the Stoll, Speed or Sackett families?

Mr. Woolfolk: No, sir.

Mr. Hogan: Are you acquainted with Mr. Brown who has just interrogated you?

Mr. Woolfolk: No, sir.

Mr. Hogan: Have you ever been employed by the government?

Mr. Woolfolk: No, sir.

Mr. Hogan: Has any member of your family ever been employed by the government?

Mr. Woolfolk: I have an Uncle who had been, but he

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is retired now.

Mr. Hogan: What position did he have?

Mr. Woolfolk: He was a veterinarian for the meat inspectors, in the office of Animal Husbandry.

272 Mr. Hogan: Have you ever had any business with the government?

Mr. Woolfolk: No.

Mr. Hogan: Selling the government produce?

Mr. Woolfolk: No, sir.

Mr. Hogan: Do you receive the crop cut-out checks?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Have you read the newspapers about this matter?

Mr. Woolfolk: Not only what I read yesterday about the jury and all.

Mr. Hogan: Nine years ago when it was in the newspapers, did you read about it then?

Mr. Woolfolk: I might have then. I don't remember anything about it much in particular.

Mr. Hogan: Did you formulate any opinion about the guilt or innocence of this defendant at that time?

Mr. Woolfolk: No, sir.

Mr. Hogan: Or at any time after that?

Mr. Woolfolk: No.

Mr. Hogan: Are you on any Board now, or have you ever been on any board or commission of the government?

Mr. Woolfolk: No.

Mr. Hogan: Have you served upon a jury within the past 12 months in a circuit court of your county, or
273 in the federal court?

Mr. Woolfolk: I served on my circuit court last September a year ago—pettit jury.

Mr. Hogan: In Meade County?

Mr. Woolfolk: Yes.

Mr. Hogan: Do you know Mr. Milton Whitworth?

Mr. Woolfolk: Yes.

Mr. Hogan: Do you know Percy Shumate?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime who interposes insanity as a de-

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fense?

Mr. Woolfolk: How was that?

Mr. Hogan: Do you have any prejudice against one who pleads insanity when charged with a crime?

Mr. Woolfolk: No, sir, I suppose not.

Mr. Hogan: Well are you fixed in your mind about that, or is there some doubt in your mind as to whether or not you have prejudice?

Mr. Woolfolk: I don't think so.

Mr. Hogan: I would like to determine, Mr. Woolfolk, whether you are a person who believes that one charged with a crime and pleads insanity does so for the purpose of escaping punishment?

Mr. Woolfolk: Sometimes I think that might be so.

Mr. Hogan: You have had that opinion at times?

274 Mr. Woolfolk: At times—yes.

Mr. Hogan: And do you have that opinion now?

Mr. Woolfolk: I cannot say that I do. I don't know anything about this.

Mr. Hogan: All right.

The Court: It would depend on the facts in each case. Is that right?

Mr. Woolfolk: Yes, that's right.

Mr. Hogan: Do you have or would you have any prejudice against one pleading insanity as a defense to the crime charged in the indictment if it should be thereafter shown that he has been restored to sanity?

Mr. Woolfolk: I didn't understand you exactly.

Mr. Hogan: Perhaps I did not make myself as clear as I should have. Would you have any prejudice if it was shown on the trial in this case that this defendant at one time had been legally insane and if he should plead that insanity as a defense to the matters set up in this indictment, but if it had been later shown that he had been legally restored to sanity?

Mr. Woolfolk: No, sir, I don't believe I would.

Mr. Hogan: Mr. Woolfolk, if, after hearing the evidence and the law as given to you by His Honor in this case, you should entertain a reasonable doubt as to the capacity of this defendant to commit the crime charged

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275 in the indictment, would you resolve that doubt in favor of this defendant and acquit him?

Mr. Woolfolk: I don't know.

The Court: Well I think I tried to explain that to him. Mr. Woolfolk, if the Court should instruct you as a matter of law that if there is a reasonable doubt of the guilt of the defendant you should find him not guilty, could you follow that instruction?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Now, if there should be a reasonable doubt in your mind, after hearing the evidence and the law, as to the guilt of this defendant, would you resolve that doubt that you have or should have in your mind, or would have, in favor of the defendant, and acquit him?

The Court: Hasn't he just answered that?

Mr. Brown: He said "yes sir."

Mr. Hogan: I thought he didn't understand the type of question you were explaining to him.

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Would you, if you entertained a reasonable doubt as to his capacity to commit a crime, resolve the doubt and acquit him?

The Court: It all raises the same question, Mr. Hogan, and I tell this juror and the others that it is their duty to follow the Court's instructions. The Court will
276 instruct them if there is any reasonable doubt about the person committing the crime, it is their duty to return a verdict of not guilty and if you received such instruction would you follow it?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: Have you ever sat upon a jury in any court which either recommended or imposed the death penalty?

Mr. Woolfolk: No, sir.

Mr. Hogan: Do you believe that because the defendant has been indicted that that is some evidence of his guilt?

Mr. Woolfolk: I don't know.

The Court: That, again, is a matter that I tried to explain before the questions were asked.

The Court will instruct you that the indictment is not to be considered as any evidence of his guilt. I tell all the

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jurors that they will not consider the indictment as any evidence at all. You will be instructed to consider only the evidence as given on this trial, and again the question comes down to: Will you follow the instructions when you are so instructed by the Court?

Mr. Woolfolk: Yes, sir.

Mr. Hogan: I pass them to you.

Mr. Brown: We accept the jury.

The Marshal: Vacate the box, Mr. Woolfolk. C. O. Brent.

277 (Mr. Brent was sworn by the Clerk.)

The Court: Mr. Brent you heard me explain what this case was about, in a general way?

Mr. Brent: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Brent: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have acquired from a casual reading the newspapers?

Mr. Brent: No, sir.

The Court: Have you formed any fixed opinion of the guilt or innocence of this defendant?

Mr. Brent: No, sir.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and the evidence presented?

Mr. Brent: No, except I would not want to recommend the death penalty is the only thing I know.

The Court: You mean you would have conscientious scruples against doing it? Maybe you would not want to, but would your situation be that you couldn't do it even if the law and the evidence required it?

Mr. Brent: Yes.

The Court: All right, you may be excused.

278 The Marshal: Frank Bury.

(Mr. Bury was sworn by the Clerk.)

The Court: Mr. Bury, you heard me explain this case to the other members of the panel?

Mr. Bury: Yes, sir.

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The Court: You understand what the case is about?

Mr. Bury: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Bury: No, sir.

The Court: Do you know anything about the facts of the case?

* Mr. Bury: Only what I read in the papers.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Bury: Yes, sir.

The Court: You mean that you have that opinion now?

Mr. Bury: Yes, sir.

The Court: Do you mean that you would enter the box with that opinion in your mind?

Mr. Bury: Yes, sir.

The Court: All right, you may be excused.

The Marshal: Robert Easton.

(Mr. Easton was sworn by the Clerk.)

279 The Court: Mr. Easton, you have heard me explain the case to the other members of the panel?

Mr. Easton: Yes, sir.

The Court: You understand what the case is about?

Mr. Easton: Yes, sir.

280 The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Easton: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have acquired by a casual reading of the newspapers?

Mr. Easton: No, sir.

The Court: Have you any fixed opinion in this case about the guilt or innocence of this defendant?

Mr. Easton: I do not believe in capital punishment.

The Court: You mean that even if the law of this case authorizes capital punishment and if the facts and the evidence justify it, you would refuse to recommend the death penalty?

Mr. Easton: Yes, sir.

The Court: All right, you may be excused.

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The Marshal: Jake Hardesty.

(Mr. Hardesty was sworn by the Clerk.)

The Court: Mr. Hardesty, you heard me explain this case to the other members of the panel?

Mr. Hardesty: Yes, sir.

280 The Court: You understand what the case is about?

Mr. Hardesty: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Hardesty: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have from a casual reading of the papers?

Mr. Hardesty: No, sir.

The Court: Have you formed any fixed opinion in the case one way or the other?

Mr. Hardesty: No, sir.

The Court: Is there any reason why you cannot sit and serve as a juror in this case and render a fair and impartial verdict according to the law and the evidence in this case?

Mr. Hardesty: I don't know whether I could give him the death penalty or not.

The Court: The question is if the law authorizes it and the facts and evidence as given to you from the witness stand justify it, would you decline to recommend it?

Mr. Hardesty: Yes, sir.

The Court: All right, you may be excused.

The Marshal: James F. Doyle.

(Mr. Doyle was sworn by the Clerk.)

281 The Court: Mr. Doyle, you heard me explain this case to the other members of the jury panel?

Mr. Doyle: Yes, sir.

The Court: You understand what the case is about?

Mr. Doyle: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Doyle: No, sir.

The Court: Do you know anything about the facts of

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the case other than what you may have casually learned?

Mr. Doyle: No, sir.

The Court: Have you formed any fixed opinion about the guilt or innocence of this defendant?

Mr. Doyle: No, sir.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and evidence?

Mr. Doyle: No, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Where do you live?

Mr. Doyle: 123 Pennsylvania Avenue.

Mr. Brown: And your business?

Mr. Doyle: Manager of a paint store.

Mr. Brown: Here in the City of Louisville?

282 Mr. Doyle: Yes, sir.

Mr. Brown: Are you married?

Mr. Doyle: Yes, sir.

Mr. Brown: Any family?

Mr. Doyle: Three children.

Mr. Brown: Their ages?

Mr. Doyle: I have 3 boys, 12, one 8 and one 3.

Mr. Brown: Have you lived in the City of Louisville all of your life?

Mr. Doyle: No, sir.

Mr. Brown: How long have you lived in the City of Louisville?

Mr. Doyle: 3 years.

Mr. Brown: Where are you from?

Mr. Doyle: Philadelphia, Pennsylvania.

Mr. Brown: Have you ever been represented in any legal matters by counsel for the defendant, Mr. Robert E. Hogan?

Mr. Doyle: No, sir.

Mr. Brown: Do you know Mr. Hogan?

Mr. Doyle: No, sir.

Mr. Brown: Mr. Doyle, under the law as given to you by the Court, and if the facts as testified to from the witness stand justify it, could you recommend the death penalty in this case?

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283 Mr. Doyle: I am afraid not, sir.

The Court: You mean that, regardless of the law and the evidence, you would decline to do so?

Mr. Doyle: I would decline, yes, sir.

The Court: All right, Mr. Doyle, step down.

The Marshal: Burke Abell.

o (Mr. Abell was sworn by the Clerk.)

The Court: Mr. Abell, you heard me explain this case to the other members of the jury panel?

Mr. Abell: Yes, sir.

The Court: You understand what this case is about?

Mr. Abell: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson Jr.?

Mr. Abell: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Abell: Only just what I read.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Abell: I couldn't say that I have. I think I could try the case according to the evidence.

The Court: You have no fixed opinion at the present time?

Mr. Abell: No, sir.

284 The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence as it will be presented to you?

Mr. Abell: Well, Judge, in a way I have conscientious scruples against death.

The Court: Now I will explain to you, and to the other members of the panel who may not have understood it, that the province of a jury in this Court in this case would be first to decide whether or not the defendant was guilty or not guilty, and then secondly if they should decide that the defendant was guilty, whether they would recommend the death penalty but whether the death penalty would be given would be up to the Court. The recommendation is only a recommendation which the Court can or can not fol-

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low, as it seems advisable.

Now, under those conditions, and if the law justifies it and if the facts and the evidence as presented warranted such recommendation, would you decline to give such recommendation?

Mr. Abell: I don't believe I would.

The Court: You mean you would decline?

Mr. Abell: I have conscientious scruples, in a way.

The Court: Do you mean that you would decline to make such recommendation?

285 Mr. Abell: Yes.

The Court: All right, Mr. Abell, you may step down.

The Marshal: Frank Eicher.

(Mr. Eicher was sworn by the Clerk.)

The Court: Mr. Eicher, you heard me explain this case to the other members of the panel?

Mr. Eicher: Yes, sir.

The Court: Are you related by blood or marriage to the defendant in this case, Thomas Henry Robinson Jr.?

Mr. Eicher: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Eicher: No, sir, only what I read in the papers.

The Court: Have you formed any fixed opinion about the guilt or innocence of this defendant?

Mr. Eicher: No, sir.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence as it will be presented to you?

Mr. Eicher: No, I don't think so.

The Court: You think you can act as a fair and impartial juror?

Mr. Eicher: Yes, sir.

The Court: All right, Mr. Brown.

286 Mr. Brown: Mr. Eicher, where do you live?

Mr. Eicher: I live out on the Taylorsville Road, near Bowman Field.

Mr. Brown: What is your business?

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Mr. Eicher: Truck gardener.

Mr. Brown: How long have you lived in that neighborhood?

Mr. Eicher: About 40 years.

Mr. Brown: Are you married?

Mr. Eicher: Yes, sir.

Mr. Brown: Have you any family?

Mr. Eicher: Yes, sir.

Mr. Brown: How many in your family?

Mr. Eicher: I have got 5 children.

Mr. Brown: Do you know counsel for the defendant, Robert E. Hogan?

Mr. Eicher: Who?

The Court: This gentleman over here sitting there looking at you?

Mr. Eicher: No, I do not.

Mr. Brown: Mr. Eicher, if under the law as given to you by the Court, and if the facts as testified to from the witness stand warranted it, could you recommend the death penalty?

Mr. Eicher: No, I wouldn't think so.

287 The Court: You mean that you would decline to do so even if the law and the facts warrant it?

Mr. Eicher: Yes, sir.

The Court: All right, step down.

The Marshall: Dave Musselman.

(The Clerk swore Mr. Musselman.)

The Court: Mr. Musselman, you have heard me explain the case to the other members of the panel?

Mr. Musselman: Yes, sir.

The Court: You understand what it is about?

Mr. Musselman: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Musselman: No, sir.

The Court: Do you know anything about the facts of the case other than what you may have acquired by casual conversation or reading the newspapers?

Mr. Musselman: Well, of course, I talked it a lot around at the time.

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The Court: Just with your friends?

Mr. Musselman: Well I talked with one of the interested parties.

The Court: Did it cause you to have any fixed opinion in this case as to the guilt or innocence of this defendant?

288 Mr. Musselman: I believe at the time it did—I don't know how it would be now.

The Court: Do you have any opinion at all in the matter?

Mr. Musselman: I talked it over with Bill Stoll at the time, and I figured what he told me was right.

The Court: Regardless of what happened then, do you now have a fixed opinion in your mind?

Mr. Musselman: I think I could come in here with an open mind.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and the evidence?

Mr. Musselman: No.

The Court: All right, Mr. Brown.

Mr. Brown: Where do you live, Mr. Musselman?

Mr. Musselman: 2110 Lauderdale.

Mr. Brown: What is your business?

Mr. Musselman: Wholesale lumber.

Mr. Brown: Where is your place of business located?

Mr. Musselman: 3d and Broadway—Breslin Building.

Mr. Brown: Are you married?

Mr. Musselman: Yes; 5 children.

289 Mr. Brown: Mr. Musselman, under the law as given to you by the Court and if the facts as testified to from the witness stand justify it, could you recommend the death penalty in this case?

Mr. Musselman: Yes, sir.

Mr. Brown: I pass them to you.

Mr. Hogan: What is the nature and extent, Mr. Musselman, of your acquaintance with Mr. William Stoll?

Mr. Musselman: Well I have known him for several years—8 or 10 years. I wouldn't call him a close friend or anything, but just an acquaintance.

Mr. Hogan: Would it embarrass or humiliate you to

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sit upon a jury in which one of the members of his family is the chief prosecuting witness?

Mr. Musselman: Yes.

Mr. Hogan: At the time you say you formed an opinion after talking to Mr. Stoll, was that opinion unfavorable to the defendant?

Mr. Musselman: Yes.

Mr. Hogan: Do you still carry that opinion with you now?

Mr. Musselman: I always felt like I got the right dope on it.

The Court: I understood you to say that you had an open mind?

290 Mr. Musselman: I still carry that opinion—

The Court (Interrupting): The point is this: Not whether or not you have to have evidence to overturn the opinion you have, but whether or not you enter this case with a free and open mind, without any prejudice one way or the other. If you have an opinion which would have to be overturned by the defendant, then you start out as a partial juror. But we have to find out whether or not your mind is open at the present time.

Mr. Musselman: Well I feel in a way that they would have to show me.

The Court: In other words, you enter the jury box with an opinion unfavorable to the defendant?

Mr. Musselman: I feel that way but at the same time I have an open mind.

The Court: Well it can't be both. You will be excused for cause.

The Marshal: Mark Spalding.

(Mr. Spalding was sworn by the Clerk.)

The Court: Mr. Spalding, you have heard me explain this case to the other members of the panel?

Mr. Spalding: Yes, sir.

The Court: You understand what the case is about?

Mr. Spalding: Yes, sir.

The Court: Are you related by blood or marriage
291 to the defendant, Thomas Henry Robinson, Jr.?

Mr. Spalding: No, sir.

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The Court: Do you know anything about the facts of this case?

Mr. Spalding: No, only what I read back yonder.

The Court: A casual reading of the newspapers?

Mr. Spalding: Yes.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Spalding: No, sir.

The Court: Is there any reason why you cannot sit on this jury and render a fair and impartial verdict according to the law and the evidence?

Mr. Spalding: Yes, sir, I have conscientious scruples about the death penalty.

The Court: You take the position then that even if the law authorizes it and the evidence from the witness stand justifies it you would decline to recommend the death penalty?

Mr. Spalding: Yes, sir.

The Court: Does the government challenge for cause?

Mr. Brown: Yes.

The Court: -All right, step down.

The Marshal: R. M. Wathen.

292 (Mr. Wathen was sworn by the Clerk.)

The Court: Mr. Wathen, you understand what the case is about from my stating the case to the other members of the panel?

Mr. Wathen: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Wathen: No, sir.

The Court: Do you know anything about the facts of this case other than from your casual reading of the newspapers?

Mr. Wathen: Yes, sir.

The Court: You do know something about it?

Mr. Wathen: Yes, sir.

The Court: What is the nature of your information or the source of it?

Mr. Wathen: My first cousin, Mr. Richard Condon, is married to Mr. Stoll's sister.

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The Court: And that gives you an interest in the case which you feel would make you a prejudiced juror?

Mr. Wathen: Yes, sir.

The Court: All right, step aside.

293 The Marshal: Richard Proctor.

(The last named juror called by the Marshal was duly sworn by the Clerk.)

The Court: Mr. Proctor, you understand what this case is about?

Mr. Proctor: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Proctor: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Proctor: No, sir.

The Court: Have you formed any fixed opinion as to the guilt or innocence of this defendant?

Mr. Proctor: No, sir, none whatever.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and evidence?

Mr. Proctor: No, sir.

The Court: All right, Mr. Brown.

Mr. Brown: Mr. Proctor, where are you from?

Mr. Proctor: Oldham County, Kentucky.

Mr. Brown: Are you married, Mr. Proctor?

Mr. Proctor: Yes, sir.

Mr. Brown: What size family have you?

294 Mr. Proctor: Four children.

Mr. Brown: Mr. Proctor, under the law as given to you by the Court, and if the facts as testified to from the witness stand justify it, could you recommend a death penalty?

Mr. Proctor: Yes, sir.

Mr. Brown: Pass the juror.

Mr. Hogan: What is your business?

Mr. Proctor: Farmer.

Mr. Hogan: What is the size of your farm, sir?

Mr. Proctor: Well, I just sold—I was running about

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500 acres, that's the reason I sold it.

Mr. Hogan: What business do you plan to enter at this time?

Mr. Proctor: Well, am just kind of broke down in health, and have got a little seven acre farm in LaGrange.

Mr. Hogan: Have you ever held any public office in Oldham County?

Mr. Proctor: No, sir; nothing only just election officer, something like that.

Mr. Hogan: What is your politics?

Mr. Proctor: Democrat.

Mr. Hogan: What is your religious belief?

Mr. Proctor: Baptist.

Mr. Hogan: Are you related to any member of the Stoll, Speed or Sackett families?

295 Mr. Proctor: No, sir.

Mr. Hogan: Do you know Mr. Brown who just interrogated you?

Mr. Proctor: No, sir.

Mr. Hogan: Do you know Mr. Inman?

Mr. Proctor: No, sir.

Mr. Hogan: Have any members of your family been employed by the United States Government?

Mr. Proctor: Nothing only my son. He is a metallurgist.

Mr. Hogan: Employed by the Government?

Mr. Proctor: Yes, sir.

Mr. Hogan: Where is he employed?

Mr. Proctor: Lexington.

Mr. Hogan: Would that fact influence your verdict in this case?

Mr. Proctor: Not a bit; none whatever.

Mr. Hogan: Have you served upon a jury in the Circuit Court of Oldham County or in this Federal Court within the past twelve months?

Mr. Proctor: No, sir.

Mr. Hogan: Are you a stockholder or director in any of the companies or corporations in which the members of the Stoll, Speed or Sackett families have any interest?

Mr. Proctor: No, sir.

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296 Mr. Hogan: Do you receive the cut-out payments from the Government?

Mr. Proctor: Which?

Mr. Hogan: Do you receive cut-out payments from the Government?

Mr. Proctor: When I owned my farm I did.

Mr. Hogan: You just recently sold your farm?

Mr. Proctor: Yes, sir.

Mr. Hogan: How old are your children?

Mr. Proctor: The oldest one is thirty-eight and the youngest twenty-two.

Mr. Hogan: What business is your thirty-eight year old child in?

Mr. Proctor: That's my son in Lexington.

Mr. Hogan: And what business are your other children in?

Mr. Proctor: They are farmers, except one. She was working here, I believe at Curtiss-Wright.

Mr. Hogan: Have you read the newspapers about this matter?

Mr. Proctor: Well, quite awhile ago I read the newspapers some, but not much because I was busy on the farm and didn't read much.

Mr. Hogan: Have you ever at any time formulated an opinion about the guilt or innocence of this defendant?

297 Mr. Proctor: No, sir, I don't know as I ever made any statement or formed any opinion.

Mr. Hogan: Has anybody ever discussed this case with you?

Mr. Proctor: No, sir.

Mr. Hogan: Have you ever heard any rumors about this case?

Mr. Proctor: Nothing, only just general topics, a person probably would speak about it—quite awhile ago, nothing lately.

Mr. Hogan: From rumors that you say you heard, did you formulate any opinion about those?

Mr. Proctor: No, sir.

Mr. Hogan: Did you read the article in the Roto-

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Magazine Section of the Courier-Journal of November 21st, 1943, about this case?

Mr. Proctor: No, sir.

Mr. Hogan: Do you have any prejudice against one charged with a crime who pleads insanity as a defense?

Mr. Proctor: No, sir.

Mr. Hogan: Do you believe that one who pleads insanity as a defense to the crime charged does so for the purpose of escaping punishment?

Mr. Proctor: I just don't exactly catch you there.

Mr. Hogan: Would the reporter mind reading that back?

298 (Question read by the reporter.)

Mr. Brown: I am going to suggest that that's an unfair question. How can anyone have any belief about it until they have heard the evidence on it?

Mr. Hogan: He may have a general opinion about it.

Mr. Brown: You didn't ask about the general opinion.

Mr. Hogan: Do you have the general belief or opinion that one who is charged with a crime and pleads insanity as a defense, generally or usually does so to escape punishment?

Mr. Proctor: Oh, not necessarily so; no.

Mr. Hogan: If it is proven to your satisfaction that this defendant was innocent, would you accept that as a defense to the crime charged?

Mr. Proctor: If the evidence proved that he was innocent I would, yes.

Mr. Hogan: Do you or would you have any prejudice against this defendant if he should enter a plea of insanity as a defense and also show that he has been restored to sanity or recovered from his insane condition?

Mr. Proctor: No.

Mr. Hogan: If you should, after hearing the evidence in this case and the law as given to you by His Honor, entertain a reasonable doubt either as to the guilt of this defendant or as to his legal capacity to commit the crime charged, would you resolve that doubt in favor of the defendant and acquit him?

299 Mr. Proctor: If it is a reasonable doubt according to

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the evidence, I would; yes, sir.

Mr. Hogan: You would resolve that doubt in favor of this defendant and turn him loose?

Mr. Proctor: If the evidence proves so; yes, sir.

Mr. Hogan: Do you believe that because there has been an indictment in this case, that that is some evidence of guilt?

Mr. Proctor: No, sir.

Mr. Hogan: Pass him to you.

Mr. Brown: We accept the jury.

Mr. Hogan: The services of Mr. Proctor will not be required.

The Court: All right.

The Marshal: E. E. Hardin.

(The above named juror, called by the Marshal, was duly sworn by the Clerk.)

The Court: Mr. Hardin, you have heard me explain to the other members of the jury panel the general nature of this case, and you understand what the case is about?

Mr. Hardin: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

300 Mr. Hardin: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Hardin: Nothing, only what I read in the papers.

The Court: Have you formed any fixed opinion in any way as to the guilt or innocence of this defendant?

Mr. Hardin: No, sir.

The Court: Is there any reason why you cannot sit and serve as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Hardin: No, sir.

Mr. Brown: Mr. Hardin, where do you live, sir?

Mr. Hardin: Spencer County.

Mr. Brown: Do you operate and own a farm down there?

Mr. Hardin: Yes, sir.

Mr. Brown: Are you married?

Mr. Hardin: Yes, sir.

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Mr. Brown: Have you a family, Mr. Hardin?

Mr. Hardin: Three children.

Mr. Brown: What are the ages of the children.

Mr. Hardin: Twenty-two, five and seven.

Mr. Brown: Mr. Hardin, if, under the law as given to you by the Court, and if the facts as testified to from the witness-stand warrant it, would you recommend a death penalty in the case?

301 Mr. Hardin: Yes, sir.

Mr. Brown: Pass him to you.

Mr. Hogan: Mr. Hardin, have you ever sat upon a jury that recommended or imposed the death penalty?

Mr. Hardin: No, sir.

Mr. Hogan: Do you know any member of the Stoll, Speed or Sackett families?

Mr. Hardin: Well, there is a Mr. Speed at Taylorsville that's related to the Speeds, I think.

Mr. Hogan: Do you know any of the Louisville Speeds?

Mr. Hardin: No, sir.

Mr. Hogan: Or Sacketts, or Stolls?

Mr. Hardin: No, sir.

Mr. Hogan: Do you have any business contacts or connections with the Taylorsville Mr. Speed?

Mr. Hardin: No, sir.

Mr. Hogan: How many acres do you have in your farm?

Mr. Hardin: 240.

Mr. Hogan: It is located within what distance of Taylorsville?

Mr. Hardin: Eight miles.

Mr. Hogan: Toward what town?

Mr. Hardin: Shelbyville.

Mr. Hogan: Have you ever had any business transactions yourself with the Stolls, or the Speeds, or the Sacketts?

302 Mr. Hardin: No, sir.

Mr. Hogan: Do you receive the crop cut-out payments?

Mr. Hardin: Yes, sir.

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Mr. Hogan: Have you ever held a public office?

Mr. Hardin: No, sir.

Mr. Hogan: Or a political office?

Mr. Hardin: No, sir.

Mr. Hogan: Ever served upon any board or commission?

Mr. Hardin: No, sir.

Mr. Hogan: Have you sat upon a jury in the Spencer Circuit Court or in the Federal Court here within the past twelve months?

Mr. Hardin: No, sir, it has been about two years since I have been here—three years.

Mr. Hogan: Have you read anything in the newspapers about this case?

Mr. Hardin: Well, when it happened I did.

Mr. Hogan: Did you formulate any opinion then as to the guilt or innocence of this defendant?

Mr. Hardin: No, sir.

Mr. Hogan: Have you since formulated any opinion whatsoever about the guilt or innocence of this defendant?

Mr. Hardin: No, sir.

Mr. Hogan: Has anybody ever talked to you about this case?

303 Mr. Hardin: Well, yes, I have heard several talk about it.

Mr. Hogan: Just generally or did they seek you out to specifically discuss it with you?

Mr. Hardin: Just generally.

Mr. Hogan: From that general conversation, were you influenced or did you formulate any opinion about it?

Mr. Hardin: No, I can't say that I did.

Mr. Hogan: Did you formulate any unfavorable opinion towards this defendant?

Mr. Hardin: No, sir.

Mr. Hogan: Do you entertain any prejudice against one charged with a crime when that person pleads as a defense insanity?

Mr. Hardin: No.

Mr. Hogan: Are you willing to accept a plea of insanity if it should be proven to your satisfaction?

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Mr. Hardin: Yes, sir.

Mr. Hogan: Do you have any prejudice against one who pleads insanity and is able to show a restoration to sanity?

Mr. Hardin: No.

Mr. Hogan: Is any member of your family employed by the Government?

Mr. Hardin: No, sir.

304 Mr. Hogan: Any member of your family or household on any board or commission of the Government?

Mr. Hardin: No, sir.

Mr. Hogan: Do you know of any reason why you cannot sit upon this jury and, after hearing the evidence and the law as given to you, render a fair and impartial verdict?

Mr. Hardin: No.

The Court: Did you ask him if he knew of any reason?

Mr. Hogan: Yes, sir. I said, is there any reason why—

The Court: Was your answer yes or no to that?

Mr. Hardin: No.

The Court: There is no reason?

Mr. Hardin: No.

Mr. Hogan: Pass him to you.

Mr. Brown: Accept the juror.

Mr. Hogan: Accept the juror.

The Court: Let the jury stand and be sworn.

(The jury was then duly sworn by the Clerk.)

The Court: Be seated.

Mr. Brown: I suggest that before we select the alternates, we take a short recess.

305 The Court: Members of the jury, do not discuss this matter among yourselves or with anyone. This applies to the members of the panel too. Do not allow anyone to discuss it in your presence. Avoid contact with anyone that may be interested in this case. It is necessary for us to select two alternate jurors before we start on the case since, in the Court's opinion, this case will take sometime and we should have some reserve jurors avail-

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able in the event something should happen in the way of sickness to the members of the jury panel. Accordingly, as soon as the recess is over, we will proceed with the selection of the two alternate jurors.

We will take a short recess at this time, about ten minutes.

(A short recess was then taken, after which the hearing was resumed, as follows:)

The Court: Are you ready to proceed with the selection of the alternate jurors?

Mr. Brown and Mr. Hogan: Yes, Your Honor.

The Court: All right, Mr. Marshal, give us two names, please.

The Marshal: Stewart Early.

The Court: Was Mr. Early on that list?

Mr. Brown: He was one of those restricted.

The Marshal: I didn't think so.

The Court: Yes, he is on the restricted list.

306 The Marshal: Paul Marion; John A. Baesse.

(The two last above named were duly sworn by the Clerk.)

Mr. Brown: As I understand it, Your Honor, Mr. Marion will be Alternate Juror No. 1.

The Court: Selected by lot, in the event that one becomes incapacitated.

You two gentlemen who have just taken your seats there by the jury box, you understand that we are now selecting two alternates who will sit with the regular jury and hear the evidence during the complete trial, and that you will not participate in the deliberations of the jury unless it becomes necessary for you to replace one of the members of the regular twelve. If one of those twelve becomes sick so as to be unable to continue in attendance, it may be necessary to discharge such person and replace him with one of the two alternates, but if no such casualty or eventuality happens the two alternates will merely hear the evidence through the trial and when the jury retires to consider they will be excused. You will only be used as a reserve jury in case it is necessary to use your services.

Both of you men have heard me explain this case to the

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panel. You understand what the case is about.

Either one of you related by blood or marriage to the defendant, Thomas H. Robinson, Jr.?

307 Mr. Marion and Mr. Baesse: No.

The Court: Either one of you know anything about the facts of the case?

Mr. Marion and Mr. Baesse: No.

The Court: Has either one of you formed any fixed opinion in the case about the guilt or innocence of the defendant?

Mr. Baesse: No.

Mr. Marion: I have.

The Court: You say you have?

Mr. Marion: I have; yes, sir.

The Court: Is that an opinion that you feel exists in your mind today or do you have an open mind about it at the present time?

Mr. Marion: I think I have a definite opinion.

The Court: Does either side wish to excuse him for cause?

Mr. Brown: It is all right with me.

Mr. Hogan: I think if he has a fixed opinion he should not serve.

The Court: All right, excused for cause.

The Marshal: What is your name, sir?

Mr. Marion: Paul Marion.

The Marshal: C. C. Borders.

(Mr. Borders was thereupon duly sworn by the Clerk.)

308 The Court: Mr. Borders, you have heard me state this case generally to the other members of the jury panel?

Mr. Borders: Yes, sir.

The Court: You understand what the case is about?

Mr. Borders: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Borders: No, sir.

The Court: Do you know anything about the facts in the case?

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Mr. Borders: No, sir, only what I have read in the papers, that's all.

The Court: Have you formed any fixed opinion about the guilt or innocence of this defendant?

Mr. Borders: No, sir.

The Court: Is there any reason why either one of you two gentlemen cannot sit as an alternate juror or regular juror as called upon in this case and render a fair and impartial verdict according to the law and evidence?

Mr. Baesse: Yes, sir.

The Court: There is a reason why you cannot sit?

Mr. Baesse: I am hard of hearing.

The Court: You are hard of hearing?

Mr. Baesse: Yes, sir.

The Court: You mean you think it would be
309 difficult for you to hear the evidence?

Mr. Baesse: Yes, sir, I think it would.

Mr. Borders: I could not conscientiously recommend a death penalty.

The Court: What has been the condition of your hearing?

Mr. Baesse: Just one ear is deaf. Shuffling and coughing makes it difficult for me to hear.

The Court: Have you been hearing what has been going on here?

Mr. Baesse: Not thoroughly.

The Court: All right, both of you gentlemen may be excused. Let me get your names.

Mr. Baesse: J. A. Baesse.

Mr. Borders: C. C. Borders.

The Marshal: Hubert Rogers. B. J. Campbell.

(Mr. Rogers and Mr. Campbell were duly sworn by the Clerk.)

The Court: Mr. Rogers and Mr. Campbell, you have heard me explain the case to the other members of the panel. You both understand the general nature of this case?

Mr. Rogers and Mr. Campbell: Yes, sir.

The Court: Either one of you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

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Mr. Rogers and Mr. Campbell: No, sir.

310 The Court: Either one of you know anything about the facts of the case?

Mr. Campbell: Only what I read in the paper.

The Court: Either one of you formed any fixed opinion in the case about the guilt or innocence of the defendant?

Mr. Rogers: I formed an opinion.

The Court: Are you Mr. Rogers?

Mr. Rogers: Yes, sir.

The Court: How about you, Mr. Campbell?

Mr. Campbell: No, sir.

The Court: Have you an opinion now, Mr. Rogers?

Mr. Campbell: Yes, sir.

The Court: One that has continued from the time when you first made it up to the present time and it exists in your mind now?

Mr. Rogers: Yes, sir.

The Court: One that is unfavorable to the defendant?

Mr. Rogers: Yes, sir.

The Court: All right, you may be excused, Mr. Rogers.

The Marshal: C. E. Miller.

(Mr. Miller was duly sworn by the Clerk.)

The Court: Mr. Miller, you have heard me explain the case to the other members of the panel?

Mr. Miller: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

311 Mr. Miller: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Miller: No, sir.

The Court: Have you formed any fixed opinion in this case as to the guilt or innocence of the defendant?

Mr. Miller: No, sir, I have not.

The Court: Is there any reason why either one of you two gentlemen cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Miller and Mr. Campbell: No, sir.

The Court: Mr. Brown.

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Mr. Brown: Mr. Miller, where are you from, sir?

Mr. Miller: Meade County.

Mr. Brown: And your business?

Mr. Miller: Farmer.

Mr. Brown: Have you a family, Mr. Miller?

Mr. Miller: Yes, sir.

Mr. Brown: What size family?

Mr. Miller: Five children and my wife.

Mr. Brown: Mr. Miller, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, could you recommend a death penalty?

Mr. Miller: Yes, sir.

Mr. Brown: Mr. Campbell, where are you from sir?

312 Mr. Campbell: Louisville, Kentucky.

Mr. Brown: And your business?

Mr. Campbell: Plastering business.

Mr. Brown: Are you married, Mr. Campbell?

Mr. Campbell: Yes, sir.

Mr. Brown: What size family have you?

Mr. Campbell: Three children.

Mr. Brown: Mr. Campbell, under the law as given to you by the Court, and if the facts as testified from the witness-stand justify it, could you recommend a death penalty in this case?

Mr. Campbell: Yes, sir.

Mr. Brown: Pass them. Mr. Campbell, do you know counsel for the defendant, Mr. Robert E. Hogan?

Mr. Campbell: No, sir.

Mr. Brown: Pass them to you.

Mr. Hogan: Mr. Miller, what size farm do you have?

Mr. Miller: I have a 300 acre farm.

Mr. Hogan: What part of Meade County are you located in?

Mr. Miller: I live seven miles West of Brandenburg on U. S. 60.

Mr. Hogan: Do you receive the cut-out checks from the Government?

Mr. Miller: Yes, sir, I do.

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313 Mr. Hogan: Do you know Mr. Brown or Mr. Inman?

Mr. Miller: No, I do not.

Mr. Hogan: Are you acquainted with the members of the Stoll, Speed or Sackett families?

Mr. Miller: No, I am not.

Mr. Hogan: Are you related by the ties of blood or marriage to any members of those families?

Mr. Miller: No, sir.

Mr. Hogan: Do you do any business or trading with the Stolls, Speeds or Sackett families, or with any business in which they are interested?

Mr. Miller: No, sir.

Mr. Hogan: Have you ever sat upon a jury that imposed or recommended the death penalty?

Mr. Miller: I have not.

Mr. Hogan: Would you have any prejudice against this defendant if he should during the course of this trial plead insanity as a defense?

Mr. Miller: I would not.

Mr. Hogan: If you should, after hearing the law and the evidence, entertain a reasonable doubt in your mind either as to his guilt or as to his capacity to commit the crime charged, would you resolve that doubt in his favor and acquit him?

Mr. Miller: I would; yes, sir.

314 Mr. Hogan: Mr. Campbell, have you ever sat upon a jury that imposed the death penalty?

Mr. Campbell: One time.

Mr. Hogan: Did you vote to impose the death penalty?

Mr. Campbell: It was unanimous.

Mr. Hogan: You did vote that way?

Mr. Campbell: Yes, sir.

Mr. Hogan: And the death penalty was imposed?

Mr. Campbell: Yes, sir.

Mr. Hogan: Have you sat upon a jury in the Circuit Court within the past twelve months?

Mr. Campbell: No, sir.

Mr. Hogan: Have you sat upon a jury in this Court within the past twelve months?

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Mr. Campbell: No, sir.

Mr. Hogan: Would you, after hearing the evidence and the law, resolve any reasonable doubt in your mind in favor of the defendant?

Mr. Campbell: Yes, sir.

Mr. Hogan: As to his guilt or as to his capacity to commit a crime, the crime charged in the indictment, and acquit him?

Mr. Campbell: Yes, sir.

Mr. Hogan: Do you do any business with the Stoll, Speed or Sackett families?

315 Mr. Campbell: Well, through the firm. They buy gas from them, that's all.

Mr. Hogan: Do you sell them any materials?

Mr. Campbell: Well, they sell them material, wall plaster—Kentucky Wall Plaster.

Mr. Hogan: Are you an officer of the Kentucky Wall Plaster Company?

Mr. Campbell: I am one of the owners.

Mr. Hogan: And that company of which you are one of the owners deals with the Stoll Oil Company, is that right?

Mr. Campbell: Yes, sir.

Mr. Hogan: They buy from you?

Mr. Campbell: They buy materials sometimes when they build stations.

Mr. Hogan: Would that influence your decision in this case?

Mr. Campbell: No.

Mr. Hogan: Do you know any of the Stoll family?

Mr. Campbell: No, sir.

Mr. Hogan: With whom do you deal at the Stoll Oil Company usually?

Mr. Campbell: Well, they do it through the plant, Kentucky Wall Paster. I don't know who they deal with. There are others run the business up there—my uncle.

316 Mr. Hogan: Who is your uncle?

Mr. Campbell: John Campbell.

Mr. Hogan: Do you know Mr. Brown.

Mr. Campbell: No.

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Mr. Hogan: Mr. Inman?

Mr. Campbell: No.

Mr. Hogan: Is any member of your family employed by the Government?

Mr. Campbell: My son.

Mr. Hogan: Where is he employed?

Mr. Campbell: The FBI, special agent.

Mr. Hogan: Would that fact influence your decision in this case?

Mr. Campbell: No.

Mr. Hogan: Has your son worked on any facts in this case?

Mr. Campbell: No, sir.

Mr. Hogan: Pass him to you.

Mr. Brown: Accept the alternate jurors.

Mr. Hogan: Mr. Campbell will not be required.

The Marshal: W. C. Magruder.

(Mr. Magruder was duly sworn by the Clerk.)

The Court: Mr. Magruder, you have heard me explain this case to the other members of the jury panel?

Mr. Magruder: Yes, sir.

317 The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Magruder: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Magruder: No, sir.

The Court: Have you any fixed opinion one way or the other as to the guilt or innocence of this defendant?

Mr. Magruder: No, sir.

The Court: Is there any reason why you cannot sit and serve as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Magruder: No, sir.

The Court: Mr. Brown.

Mr. Brown: Your Honor, I thought this was one of the jurors that said he was not a housekeeper.

Mr. Magruder: That is true, Judge.

The Court: I thought you said that you kept your home here in Louisville.

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Mr. Magruder: I am going to vote here, and I am only a widower now and I am staying with my son until the war is over. Then I am coming back and go into business. But I wouldn't be a housekeeper and I am not a housekeeper now.

The Court: You may be excused. Gentlemen, that
318 exhausts our jurors with the exception of those that may be—

Mr. Brown: If he is otherwise acceptable, I will certainly waive that housekeeper qualification if Mr. Hogan is willing to.

Mr. Hogan: After I interrogate him, I may be willing to do it. You want to interrogate him first?

Mr. Brown: Yes, sir, I will go ahead and ask him first. shall I proceed, Your Honor?

The Court: Yes.

Mr. Brown: Mr. Magruder, when you owned property in Louisville, where did you live?

Mr. Magruder: At 1309 First.

Mr. Brown: 1309 S. First Street?

Mr. Magruder: Yes, sir.

Mr. Brown: And when you were in business, what type of business were you in?

Mr. Magruder: Tiles and mantels—Hegan, Magruder Company.

Mr. Brown: Mr. Magruder, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, could you recommend a death penalty?

Mr. Magruder: Yes, sir.

Mr. Brown: Pass him to you.

Mr. Hogan: What business is your son in, Mr. Magruder?

319 Mr. Magruder: He is a chemist, metallurgist.

Mr. Hogan: By whom is he employed?

Mr. Magruder: Carter Carburetor Company, St. Louis.

Mr. Hogan: Is that the only child or children you have?

Mr. Magruder: Yes, sir.

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Mr. Hogan: How long has the Hegan, Magruder Company been out of business?

Mr. Magruder: Since 1932.

Mr. Hogan: During the course of that business did you sell to the Stoll, Sackett or Speed families any materials?

Mr. Magruder: Practically all of them, through the company—Mr. Sackett and Mr. Speed, perhaps Mr. Stoll.

Mr. Hogan: You know them well, I take it?

Mr. Magruder: No, I do not.

Mr. Hogan: The Stolls?

Mr. Magruder: I knew the old gentleman years ago.

Mr. Hogan: Senator Sackett?

Mr. Magruder: I knew Mr. Sackett.

Mr. Hogan: Did you know Mr. J. B. Speed?

Mr. Magruder: I only knew him when I would see him. I dealt through his architect and contractors.

Mr. Hogan: You said a moment ago you knew the old gentleman years ago. To whom did you refer?

Mr. Magruder: That's Mr. Stoll. He is dead, I believe.

Mr. Hogan: You knew Charles C. Stoll, the head of Stoll Oil Company?

Mr. Magruder: C. C. Stoll; yes, sir.

Mr. Hogan: That was a rather intimate relationship?

Mr. Magruder: No, sir.

Mr. Hogan: Intimate business relationship?

Mr. Magruder: No, sir.

Mr. Hogan: Extensive business relationship?

Mr. Magruder: Only selling him material for his residence through his architect and contractor.

Mr. Hogan: Well, the Stoll Oil Company had considerable business of that type, did it not?

Mr. Magruder: That was the kind that I sold him. I sold him for his individual residence.

Mr. Hogan: Is that the only business transaction you ever had with Mr. Charles Stoll?

Mr. Magruder: Yes, sir.

Mr. Hogan: Would the fact that you had had business relationships with Mr. Stoll influence your decision in this

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case?

Mr. Magruder: No, sir.

Mr. Hogan: Have you read the newspapers about this case?

Mr. Magruder: Yes, sir, I have read what's in the newspapers.

321 Mr. Hogan: Did you formulate an opinion on that article or articles?

Mr. Magruder: I did not.

Mr. Hogan: Have you any fixed opinion as to the guilt or innocence of this defendnat?

Mr. Magruder: No, sir.

Mr. Hogan: Has anybody ever discussed the case with you?

Mr. Magruder: Only in a general way, years ago when it was up.

Mr. Hogan: Did any members of the Stoll, Speed or Sackett families discuss it with you?

Mr. Magruder: No, sir.

Mr. Hogan: Was that discussion just by general topic of the day?

Mr. Magruder: That's right.

Mr. Hogan: From that discussion, did you formulate then an opinion?

Mr. Magruder: No, sir.

Mr. Hogan: Or were you influenced by the opinion of others?

Mr. Magruder: No, sir.

Mr. Hogan: Have you ever sat upon a jury that imposed the death penalty?

Mr. Magruder: No, sir.

322 Mr. Hogan: Did you ever have any social, civic, religious or charitable contacts with the members of the Stoll, Speed or Sackett families?

Mr. Magruder: No, sir.

Mr. Hogan: With what religious denomination are you affiliated?

Mr. Magruder: Methodist.

Mr. Hogan: Did you ever attend the same church as any members of the Stoll, Speed or Sackett families?

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Mr. Magruder: No, sir. I am not an active member by any means. That's my belief.

Mr. Hogan: Pass him back to you.

Mr. Brown: Accept the jury.

(Here followed an off-the-record conference between counsel and the court, after which the hearing proceeded as follows:)

The Court: Mr. Magruder, you may stand aside.

Now, members of the jury panel, that brings us down to the situation that I hoped we would not come to, namely, our reserve list of jurors. All have asked to be excused for one reason or another. You can see that we are just as in dire need of your services as your employers are, or your business is, and while I would like to let all of you off, I feel that some of you possibly can be used as jurors and under the circumstances should be used as jurors. I

323 am going over this list. I have gone over it several times. There are fourteen names on this list. I feel that I will have to excuse ten of you. The other four I am going to keep as possible jurors, subject to qualification. The following people, then, can be excused: J. W. Haycraft, W. O. Gibson, J. S. Early, Mrs. McClarty, Guy Attkisson, Earl Dacon, Bob McElroy, John W. Crain, Russell Argenbright, Fred Whitehead. The four jurors who asked to be excused and whose excuses I do not think justify them being excused at the present and who will be asked to stay: Mr. Sam Houtchen, J. M. McTighe, R. C. Money, Mr. Logan Crume. Mr. Marshal, you put those four names in the box—Mr. Sam Houtchen, J. M. McTighe, R. C. Money and Mr. Logan Crume. The other ten that I have referred to and have asked to be excused can be excused. Please go to the Clerk's office and get your certificates and then to the Marshal's office to get your compensation before you leave. That also applies to all the other members of the jury panel who have been called into the box and who have been excused for some reason or other. There are four men to remain, as I have told you. Call one of the four.

The Marshal: Sam Houtchen. Come around, Mr. Houtchen.

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(Mr. Houtchen was duly sworn by the Clerk.)

The Court: Mr. Houtchen, you have heard me explain to the other members of the jury panel what this case is about?

324 Mr. Houtchen: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas H. Robinson, Jr.?

Mr. Houtchen: No, sir.

The Court: Do you know anything about the facts of the case?

Mr. Houtchen: Only what I have read.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Houtchen: I would be opposed to a death penalty.

The Court: I don't just want you to follow the lead of other jurors. I want you to exercise an honest opinion in this case.

Mr. Houtchen: That's my honest opinion.

The Court: Have you ever sat on other juries where the death penalty has been imposed?

Mr. Houtchen: No, sir.

The Court: Have you ever expressed to anybody heretofore that you were opposed to the death penalty?

Mr. Houtchen: Yes, sir, I have.

The Court: Recently?

Mr. Houtchen: No, sir.

The Court: You mean to say then, that even if the
325 Court or the law authorized it and the evidence justified it, you would still decline to do it?

Mr. Houtchen: I couldn't do it, Judge.

The Court: All right, you can be excused.

The Marshal: Arle C. Money.

(Mr. Money was duly sworn by the Clerk.)

The Court: Mr. Money, you have heard me outline this case to the other members of the jury panel.

Mr. Money: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

Mr. Money: No, sir.

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The Court: Do you know anything about the facts of the case?

Mr. Money: Only what I have read in the newspapers.

The Court: Is there any reason why you cannot sit as a juror in this case and render a fair and impartial verdict according to the law and the evidence?

Mr. Money: No.

The Court: You may ask him, Mr. Brown.

Mr. Brown: Mr. Money, where do you live, sir?

Mr. Money: Spencer County.

Mr. Brown: You own and operate a farm down there?

Mr. Money: Yes, sir.

Mr. Brown: Do you have a family, Mr. Money?

326 Mr. Money: Yes, sir.

Mr. Brown: What size family?

Mr. Money: I have three children.

Mr. Brown: Mr. Money, under the law as given to you by the Court, and if the facts as testified to from the witness-stand justify it, would you recommend a death penalty?

Mr. Money: I am not altogether opposed to capital punishment, but in this particular case and what I know about it I would be.

Mr. Brown: You are not opposed to capital punishment?

Mr. Money: Not altogether; no, sir.

Mr. Brown: Not what?

Mr. Money: Not altogether; no, sir; in some cases.

Mr. Brown: That's what I am trying to get at now. If the facts as testified to from the witness-stand justify it to you, would you have any conscientious scruples about recommending it? Would you?

Mr. Money: Well, I say, in some particular cases I would not.

Mr. Brown: You don't know anything about the facts of this case, do you?

Mr. Money: No, only what I have read in the papers.

The Court: You mean, it would depend on the facts in each case then.

327 Mr. Money: That's right.

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Mr. Brown: Now, if the facts as disclosed in this case in your opinion justify it, you have no conscientious scruples against recommending it, do you?

Mr. Money: No.

Mr. Brown: I pass him on to you.

Mr. Hogan: Are you related to any members of the Stoll, Speed or Sackett families?

Mr. Money: No, sir.

Mr. Hogan: Is any member of your family related to them?

Mr. Money: No, sir.

Mr. Hogan: Do you know them?

Mr. Money: I know, yes, sir, some of them. I know members of the Speed family very well.

Mr. Hogan: What members of the Speed family do you know, sir?

Mr. Money: Mr. Speed, Taylorsville, a very good friend of mine.

Mr. Hogan: Do you know the Louisville Speeds?

Mr. Money: No.

Mr. Hogan: What relation is the Taylorsville Speeds to the Louisville Speeds?

Mr. Money: Cousins, I think.

Mr. Hogan: What business is the Taylorsville Mr. Speed in?

328 Mr. Money: He is a retired farmer.

Mr. Hogan: What is that?

Mr. Money: Retired farmer.

Mr. Hogan: Have you ever sat upon a jury in which the death penalty was imposed?

Mr. Money: No, sir.

Mr. Hogan: Do you trade or do any business with the Stoll Oil Company?

Mr. Money: Only as far as buying gas.

Mr. Hogan: Do you buy that under contract?

Mr. Money: No.

Mr. Hogan: Just occasionally?

Mr. Money: Just occasionally.

Mr. Hogan: Do you know any members of the Stoll Oil Company?

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Mr. Money: Yes, sir, I have an acquaintance with them.

Mr. Hogan: Who do you know?

Mr. Money: Well, through my sister—Mr. Berry Stoll, I think William Stoll, some of them.

Mr. Hogan: Through your sister you know them?

Mr. Money: Yes, sir.

Mr. Hogan: Who is your sister?

Mr. Money: Well, I have two or three of them.

Mr. Hogan: Well, this particular one through
329 whom you know Berry Stoll.

Mr. Money: Mrs. Coslow.

Mr. Hogan: Is she employed by the Stolls?

Mr. Money: No, sir.

Mr. Hogan: What is her business?

Mr. Money: She is teaching school.

Mr. Hogan: Would you mind relating how you know
Mr. Berry Stoll through that sister?

Mr. Money: Well, she had a friend here in Louisville, it has been several years ago, was acquainted with them. She used to visit there, and young Mr. Stoll used to come there to the place.

Mr. Hogan: Do you see Mr. Berry Stoll often?

Mr. Money: No, sir.

Mr. Hogan: How long has it been since you saw and talked to him?

Mr. Money: Oh, it has been quite awhile.

Mr. Hogan: Years or months?

Mr. Money: Years.

Mr. Hogan: Any member of your family employed by the Government?

Mr. Money: I have two daughters working for the Government.

Mr. Hogan: In what department?

Mr. Money: Well, one of them is secretary to the
330 draft board, and the other one is with the Government map service here in Louisville.

Mr. Hogan: Do you know Mr. Brown or Mr. Inman?

Mr. Money: No, sir.

Mr. Hogan: Do you receive a crop cut-out payment?

Mr. Money: Soil conservation payment.

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Mr. Hogan: Are you in any other business except farming?

Mr. Money: No, sir.

Mr. Hogan: Do you own any stock in any of the companies in which the Stoll, Speed or Sackett families have any interest?

Mr. Money: No, sir.

Mr. Hogan: Do you have any prejudice against one charged with a crime of pleading insanity as a defense?

Mr. Money: No, not particularly.

Mr. Hogan: You say not particularly. Just what kind of prejudice do you have?

Mr. Money: It just depends on the evidence.

Mr. Hogan: Have you at any time felt that because one interposed a plea of insanity that that was an unjustified or a sham offense?

Mr. Money: I have; yes, sir.

Mr. Hogan: Has that been your general conviction and belief?

331 Mr. Money: Several times.

Mr. Hogan: Is that your belief in this case?

Mr. Money: Not particularly; no, sir.

Mr. Hogan: You keep saying "not particularly", Mr. Money. Is it at all your belief or opinion?

Mr. Money: No, I wouldn't say it was; from what I have read of the case.

The Court: It depends on the facts in each particular case?

Mr. Money: Absolutely; yes, sir.

Mr. Hogan: Have you read the newspaper articles about this case?

Mr. Money: Yes, sir.

Mr. Hogan: From a reading of those articles, did you form in your mind any opinion about the guilt or innocence of this defendant?

Mr. Money: Yes, sir; I did.

Mr. Hogan: Is that a fixed opinion?

Mr. Money: No, I wouldn't say it was.

Mr. Hogan: Do you carry that opinion with you today?

Mr. Money: No.

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Mr. Hogan: When did you lose it?

Mr. Money: Well, after the case was over, sometime ago.

Mr. Hogan: Was that opinion from its inception
332 an unfavorable opinion to this defendant?

Mr. Money: Yes, sir.

Mr. Hogan: And you never dismissed that opinion from your mind until, as you say, the case was over some-time ago?

Mr. Money: That's right.

Mr. Hogan: After that time you did not have an occasion to bring it to your attention again.

Mr. Money: No, sir.

Mr. Hogan: So the last time it was before you, you still had an unfavorable opinion against this defendant.

Mr. Money: Yes, sir.

Mr. Hogan: And you have not changed that opinion.

The Court: I think the question is now, the point is now, whether or not you have any opinion at the present time, whether you have an open mind in this case.

Mr. Hogan: No, Judge.

The Court: You can ask him something else. I am asking him this.

Mr. Money: Well, I think I have.

The Court: You haven't any opinion one way or the other at the present time.

Mr. Money: No.

Mr. Hogan: Mr. Money, would it take evidence to change whatever opinion you might have had in the past?

333 Mr. Money: Yes, sir.

Mr. Hogan: In other words, you come to this jury service with an unfavorable slant towards this defendant.

Mr. Money: Well, I would have to admit that, I guess.

The Court: Now, Mr. Money, you answer me one way and you answer Mr. Hogan the other way. They can't both be right. I am asking you whether you have an open mind at this time and do not have your former opinion. You tell me yes. Then you tell Mr. Hogan that you do have an opinion that would have to be overcome by the evidence.

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Now, which one of those is true?

Mr. Money: What I meant, Your Honor, it would take evidence to make me change the opinion I did have.

The Court: Then you still have an opinion at the present time. You do not have an open mind.

Mr. Money: I guess that's right.

The Court: All right, stand aside.

The Marshal: James N. McTighe.

(Mr. McTighe was duly sworn by the Clerk.)

The Court: Mr. McTighe, you heard me state this case to the other members of the jury panel?

Mr. McTighe: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas Henry Robinson, Jr.?

334 Mr. McTighe: No, sir.

The Court: You know anything about the facts in this case other than what you have read from the newspapers?

Mr. McTighe: Just what I have read and discussed with different people.

The Court: With different friends who may have read it also?

Mr. McTighe: My father is connected with the Byrne & Speed Coal Company.

The Court: That connection or discussion given you any fixed opinion in this case as to the guilt or innocence of the defendant?

Mr. McTighe: I think it has.

The Court: Favorable or unfavorable to the defendant?

Mr. McTighe: Unfavorable.

The Court: Do you have that opinion now?

Mr. McTighe: Yes, sir.

The Court: Irrespective of your desire not to serve on the jury, you still have an opinion, do you?

Mr. McTighe: That's right; yes, sir.

The Court: All right, Mr. McTighe, you may be excused.

The Marshal: Logan Crume.

(Mr. Crume was duly sworn by the Clerk.)

335 The Court: Mr. Crume, you have heard me state

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what this case is about?

Mr. Crume: Yes, sir.

The Court: Are you related by blood or marriage to the defendant, Thomas H. Robinson, Jr.?

Mr. Crume: No, sir.

The Court: Do you know anything about the facts in the case?

Mr. Crume: Only what I have read in the paper.

The Court: Does that cause you to have any fixed opinion as to the guilt or innocence of this defendant?

Mr. Crume: No, sir.

The Court: Is there any reason why you cannot sit as a juror and render a fair and impartial verdict according to the law and evidence as it will be presented to you?

Mr. Crume: No, sir.

The Court: Mr. Brown.

Mr. Brown: Where are you from, sir?

Mr. Crume: Springfield.

Mr. Brown: Washington County?

Mr. Crume: Yes, sir.

Mr. Brown: Are you married, Mr. Crume?

Mr. Crume: Yes, sir.

Mr. Brown: Do you have a family?

Mr. Crume: Yes, sir; two children.

336 Mr. Brown: Mr. Crume, under the law as given to you by the Court, and if the facts as testified to from the witness-stand warrant it, could you recommend a death penalty?

Mr. Crume: No, I don't believe I could.

Mr. Brown: You mean in no case, regardless of the facts, you could not recommend a death penalty?

Mr. Crume: No, I could not.

The Court: Mr. Crume, is that a belief that you have recently acquired?

Mr. Crume: No, sir, Judge.

The Court: Or is that a belief you have had for some time?

Mr. Crume: It is a belief I have had for some little time.

The Court: Have you ever expressed that belief to

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anybody?

Mr. Crume: Just talking about it.

The Court: With whom have you talked?

Mr. Crume: People on the street.

The Court: Where?

Mr. Crume: In Springfield.

The Court: Give us the names.

Mr. Crume: Ed Litsey.

The Court: Where does he live?

Mr. Crume: Springfield.

337 The Court: All right, what is the next one?

Mr. Crume: Grider.

The Court: Does he live in Springfield?

Mr. Crume: Yes, sir.

The Court: What is his first name?

Mr. Crume: Otho.

The Court: All right, anybody else?

Mr. Crume: No, sir.

The Court: Is it your statement now when you are answering the questions put to you as a prospective juror, that you have previously told those two men that you are conscientiously opposed to a death penalty?

Mr. Crume: Well, in some cases.

The Court: Now we are changing, in some cases.

Mr. Crume: In some cases; yes, sir.

The Court: You are not, then, in some cases opposed to a death penalty. You didn't tell those men.

Mr. Crume: No, sir.

The Court: Mr. Brown, go ahead.

Mr. Brown: That's all. I pass him to you.

Mr. Hogan: What part of Washington County do you live in, Mr. Crume?

Mr. Crume: I live two miles North of Springfield.

Mr. Hogan: That's near Willisburg?

Mr. Crume: Ten miles this side.

338 Mr. Hogan: Do you live just nearer Springfield than any other town then.

Mr. Crume: Yes, sir.

Mr. Hogan: Do you know any member of the Stoll, Speed or Sackett families?

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Mr. Crume: No, sir.

Mr. Hogan: Do you do any business with those companies in which they have an interest?

Mr. Crume: Only just stop sometime and buy gas.

Mr. Hogan: Do you have any members of your family employed by the United States Government?

Mr. Crume: No, sir.

Mr. Hogan: Have they ever been so employed?

Mr. Crume: No, sir.

Mr. Hogan: Were you ever so employed?

Mr. Crume: No, sir.

Mr. Hogan: Are you on any board or commission?

Mr. Crume: No, sir.

Mr. Hogan: Do you receive a conservation check?

Mr. Crume: Yes, sir.

Mr. Hogan: Commonly called a cut-out check?

Mr. Crume: Yes, sir.

Mr. Hogan: Have you ever sat upon a jury that imposed the death penalty?

Mr. Crume: No, sir.

339 Mr. Hogan: Do you have any prejudice against one who interposes and pleads insanity as a defense to the crime charged?

Mr. Crume: Some; yes, sir.

Mr. Hogan: Do you believe that one who pleads insanity does so for the purpose of excusing himself from the accusation of the commission of the crime?

Mr. Crume: Yes, sir.

Mr. Hogan: Then you do have a prejudice, then.

The Court: Just a minute. I believe anyone who pleads insanity does it for the purpose of getting out of the crime, that is the nature of the plea, but does the fact that such a defense is made cause you to react unfavorably to it in any way?

Mr. Crume: No, sir.

The Court: Can you still hear the issue on that point, hear the evidence and decide it without prejudice one way or the other?

Mr. Crume: Well, to some extent.

The Court: Well, would you be influenced either for

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or against such plea outside of any evidence you hear or would you decide the issue entirely upon the evidence?

Mr. Crume: Well, I believe I would kinda look against it.

The Court: In other words, you do not want to serve on this jury.

340 Mr. Crume: No, sir.

The Court: You may be excused. Where do you live, Mr. Crume?

Mr. Crume: Springfield.

The Court: All right. Take a note of Mr. Crume, Mr. Clerk.

Gentlemen, that exhausts our jurors. We will probably have to delay a day or two before we can get some more. It is rather unusual for a panel of some over a hundred or more not to be able to get people who would be willing to serve as jurors. We did not anticipate that we would run into such a situation, and accordingly did not have any more available, but we can get some more. It just means an inconvenience to the present jury which will have to remain together while we are getting more jurors and delaying the witnesses who are here to testify until we can get the jurors present.

I would like to confer with counsel.

Mr. Brown: I would like to suggest, Your Honor, that we take a chance on one alternate.

The Court: I will confer with you and counsel. It is lunch time anyhow, and we can excuse everyone until about 2:00 o'clock. The jury can be excused likewise. I think the persons who are in charge of the jury should be sworn, the bailiff and the two deputy marshals—come for-

341 ward and be sworn.

(The bailiff, Mr. Moorman, and two deputy marshals, Mrs. Bernardine Kearney and Mr. Cassidy, were then duly sworn by the Clerk.)

The Court: All right, the Jury will go to lunch in charge of the deputy marshals and be here for court at 2:00 o'clock. The other members, that is, the jurors who have been in the box and excused, are, of course, excused, they need not return. You probably want the witnesses to

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be here, don't you?

Mr. Brown: Yes, sir.

The Court: The witnesses will return at 2:00 o'clock.
(At this point the further proceedings were adjourned
for lunch and recess.)

342 After the recess the following proceedings were
had:

The Court: I will announce to the jurors and parties
in interest that after conferring with the attorneys in the
case and giving consideration to the different elements
involved, particularly to the loss of time and to the delay
which would be encountered in attempting to get addi-
tional jurymen here, it has been decided to proceed with
just one alternate juror instead of the two as we had
originally contemplated.

Accordingly, the jury will be considered as having been
selected together with the one alternate which we will have
available and, after the swearing of the alternate, the trial
will proceed as in the usual course.

(At this point the alternate was sworn by the Clerk.)

Mr. Hogan: If Your Honor please, I would like for the
record to show my exception to the ruling of the separate
alternate.

The Court: I understood that there would be no ex-
ception to it.

Mr. Hogan: We discussed it but I did not know that
was decided on.

The Court: You remember, we talked about it in
chambers.

343 Mr. Hogan: Then I withdraw it.

The Court: I said if there was any objection to
it, it would not be done.

Mr. Hogan: All right.

The Court: Mr. Brown, do you want the witnesses
sworn?

Mr. Brown: Yes, sir.

The Court: Does the defense want any witnesses sworn
at the same time?

Mr. Hogan: No, we will reserve the swearing of the
witnesses at the present time.

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(The witnesses for the government were sworn by the Clerk.)

The Court: Is a separation desired?

Mr. Hogan: Yes, a separation is desired.

The Court: Let all the witnesses who are to testify in this case, either for the government or for the defendant, please retire to the courtroom down the hall here where you can remain subject to call, keeping in mind that no smoking is permitted in that courtroom. Also, if you do wish to smoke, you may retire to the hall adjoining the courtroom and use the bench available there, but do not go away where you cannot be located very promptly because we do not want to have to wait for looking for witnesses who may have strayed around the corner
 344 or somewhere else where they cannot be located.

Robinson, there seems to be some question of whether or not you are represented in this case by Mr. Monte Ross. He has not appeared as counsel in this case as yet. He told me definitely last night or yesterday afternoon that he is not in the case. He is not here now.

Mr. Robinson: Mr. Ross is only appearing in an advisory capacity.

The Court: I don't care whether he is representing you in an advisory capacity—is he representing you in any capacity? He is not here.

Mr. Robinson: It is perfectly agreeable to me to proceed without him.

The Court: All right. Then it is understood that he is not an attorney in the case, and you do not request that he be an attorney in the case?

Mr. Robinson: That is right.

The Court: Are counsel ready to proceed then?

Mr. Brown: Yes, Your Honor. Mr. Inman will make the opening statement on behalf of the government.

The Court: Now, Members of the Jury, in a criminal case in a United States District Court, counsel for both the government and for the defendant have the right to make opening statements to the jury outlining to the jury what their evidence is expected to show.

345 I want you to keep in mind that the opening

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statements are not evidence and it is not to be considered by you as evidence in the case, but it will merely be considered as a preview of what counsel expects his evidence to show when it is introduced.

You will be guided, of course, by the evidence as it is actually introduced later.

The government will present its opening statement first, through Mr. Inman, the Assistant District Attorney, and counsel for the defendant has the option to make his statement either at the close of Mr. Inman's statement or reserve it until the close of the government's proof. They have the same opportunity depending upon the time that they may elect to do so.

Mr. Inman: May It Please The Court and Members Of The Jury:

A great many witnesses will be necessary to prove the allegations laid in the indictment the Court has read to you, and for that reason I want to discuss with you as briefly as I can the evidence that will be introduced in this case.

First, I want to point out now that this case is styled "United States of America vs Thomas Henry Robinson Jr." It is a criminal indictment. The Court has

346 read that indictment to you. It is in no sense, and the proof will show you that it is not in any sense, a lawsuit between the Stoll, Speed and Sackett families and Thomas Henry Robinson Jr.

The proof to be introduced by the United States will show you that this defendant, Thomas Henry Robinson Jr. was born May 7, 1907 in Nashville, Tennessee; that he is now 36 years of age. The proof will show you that in Nashville, Tennessee, he attended the grade schools of that city; that he attended the Wallace Preparatory School; and that he continued his education even to Vanderbilt University where, as a student in the law school of the Vanderbilt University, he studied for a period of time, just a few months short of graduation.

The proof will show you that he is an unusually well-educated defendant in a criminal court.

The proof will further show you, Members of the Jury,

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that this defendant came to Louisville in 1931 and for a period of time, of approximately 5 weeks, starting June 1, 1931, until July 10, 1931, he was employed at the Stoll Oil Company; employed as a station attendant at the Second and Broadway Station. In July of 1931, the proof will show you, this defendant left the employ of the Stoll Oil

Company voluntarily and on his own statement that
347 he left to secure better employment.

The proof will show you further that after that, the defendant left Louisville, and in 1934, the proof will show you, he was residing in Chicago, Illinois. From May 7 to August 18, the proof will show you, he was employed as a janitor at the Forsythe Building of Chicago. In that employment he used his own name, Thomas Henry Robinson Jr., but the proof will show you that on July 17, 1934, this defendant rented an apartment at 4639 Magnolia Avenue, in Chicago, and there he used, not his own name, but the name of John Ward. As "John Ward and wife" he rented that apartment and lived there under that name. Part of the time he was living there he was working at the Forsythe Building under his own name.

Then on September 20, 1934, just a short time prior to the commission of the crime laid in this indictment, the proof will show you, this defendant, still using the name of John Ward, went to the Saunders-U-Drive-It system in Chicago where he rented an automobile, a Ford Tador automobile, under the name of John Ward.

The proof will show you that that car figures very heavily in the commission of this crime.

Further, the proof will show you that while he was living in Chicago, and about the first part of September of the year 1934, he left Chicago, saying that he was
348 going to Evansville, Indiana, to get a wrecked car, but the proof will show you that as early as September 7th he was here in Louisville and registered at the Tyler Hotel. He returned to Chicago after that trip and rented the automobile from the Saunders-U-Drive-It company, and the proof will show you that he took this automobile that he had rented from the Saunders-U-Drive-It Company, together with his wife, and they drove from

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Chicago to Indianapolis, Indiana.

The proof will show you that there in Indianapolis, Indiana, he adopted another name, Thomas W. Kennedy, and as Thomas W. Kennedy this defendant rented an apartment, Apartment No. 2, at 2735 North Meridian; as Mr. and Mrs. Thomas W. Kennedy this defendant and his wife occupied that apartment for a short while, starting September 22d to October 8, 1934.

The proof will show you, as I have pointed out, that he was in Louisville on September 7, 1934, registered at the Tyler Hotel as John Ward; that he then returned to Chicago and then to Indianapolis as Thomas W. Kennedy; and then, the proof will show you, on October 8, 1934, he returned to Louisville and again assumed the name of John Ward, and went back to the Tyler Hotel where he registered on October 8th.

The proof will show you that between October 8th and October 10th this defendant busied himself around the City of Louisville.

349 The proof will show you that on one occasion, just before the kidnapping charged in this indictment, this defendant assumed the role of a telephone repairman and entered the home of Mr. C. C. Stoll, the father of Berry V. Stoll, and he entered that home at 2535 Cherokee Parkway in this City posing as a telephone repairman.

The proof will show that there were a number of persons in that home. The proof will show you further that it was the intention of this defendant when he came to Louisville on that occasion to kidnap C. C. Stoll. When he entered that home he surveyed that home, and then left. And the proof will show you that he entered the home of George Stoll, again representing himself as a telephone repairman. He found there the maid and, after pretending to examine the telephone in the George Stoll home, he left that home.

The proof will show you that about 2 p.m. on October 10th, the day of the kidnapping charged in this indictment, this defendant appeared on Bardstown Road at the garage operated by Mr. Hugo Kottke. The proof will show you that he went into the garage of Mr. Kottke and asked Mr.

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Kottke the direction to Lime Kiln Lane. Mr. Kottke was confused in his own mind as to the exact location and asked this defendant whom he wanted to see, and this defendant replied that he was going to the home of

350 Berry V. Stoll and wanted directions to get to Lime Kiln Lane. The proof will show you that Mr. Kottke called a friend of his at Harrod's Creek and secured the exact directions for proceeding from Bardstown Road to Lime Kiln Lane and that he advised this defendant as to the closest and quickest and best route to Lime Kiln Lane.

Approximately one hour later, at about 3 p.m. on the 10th day of October, 1934, the proof will show you that this defendant knocked on the door of the Berry V. Stoll residence. The proof will show you that that residence is situated on Lime Kiln Lane, a farm of about 53 acres, the residence situated about 600 feet from the highway, and over 500 feet from the nearest house.

About 3 o'clock in the afternoon of October, 10, 1934, this defendant, again posing as a telephone repairman, knocked on the door of the Berry V. Stoll residence. The maid answered the door, the proof will show you, and this defendant inquired of the maid is this East 2941? That at that time was the telephone number of the Berry V. Stoll residence. The maid replied, "Yes, that is our telephone number."

The proof will show you that this defendant, in the guise of that telephone repairman, entered the home of Berry V. Stoll and Alice Speed Stoll on that occasion; that he immediately went to a telephone situated in the

351 hall near the door; that he examined that telephone, inquired of other telephones about the premises, engaged the maid in conversation, and especially concerning others who were on the farm at the time. "Do you have a chauffeur?" he asked. "Do you have any hired hands?", he asked. "Who is working here?" And the maid, not suspecting him to be the kidnapper that he was, replied "We have one man who will be here until 4 o'clock. He will be here until 4 o'clock. We have no chauffeur." Then Robinson asked her, "What about your husband?", and she replied "This is his day off."

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And in this way, the proof will show you, the defendant satisfied himself that there was no one at those premises after 4 o'clock on October 10, 1934, except the maid and himself and Mrs. Stoll.

The proof will show you that he went to the garage to make an examination for himself to determine whether or not anyone was there and whether or not there was any telephone extension in the garage.

The proof will show you that in that conversation between this defendant and the maid, Ann Woollet, this defendant inquired, "Whose daughter is Mrs. Stoll? Who is her father?" and the maid replied, "She is the daughter of Mr. William S. Speed."

352 The proof will further show you that all of the wires in the telephone box on the main floor of the Stoll residence were disconnected by this defendant—every one of them taken from the post in the box.

The proof will show you that he went to the basement and there cut the leading wire leading into that telephone box. Further, the proof will show you that he said to the maid, "I desire to examine the extension, there must be an extension upstairs." The maid advised him that there was and he said he had to examine it.

The proof will show you that the maid went upstairs and found Mrs. Stoll, who had been suffering from a cold and who was resting in her bedroom, completely dressed with the exception of a street dress and in the place of that she had on a kimono. The maid informed Mrs. Stoll of the desire of this telephone man to examine that extension and the proof will show that Mrs. Stoll moved from her bedroom into the guest room in order that that examination might be made.

That proof will show that this defendant Robinson went to the upstairs of the Stoll residence, having satisfied himself that there were only two persons on the place, both of whom were women, and having gotten both of them to the second floor of that residence, he asked the maid to accompany him into the Master Bedroom where he could examine the extension and she could assist him.

353 The proof will show that as the maid stood in that

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bedroom waiting to assist this man whom she thought was a telephone repairman, he suddenly pulled upon her a gun and ordered her to lead the way into the guest room where Mrs. Stoll was resting.

The proof will show that at the point of a gun this defendant forced the maid into that guest room.

"What are you doing here", Mrs. Stoll inquired of him, and he answered, "I am here to kidnap you." He stood there with the gun in his hand; both of the women, the only persons on the Stoll residence, stood before him.

The proof will show you that Mrs. Stoll plead with him, offered him money, offered him a check if he would go and leave her alone. He refused.

The proof will show that as he attempted to carry out his kidnapping scheme, as he started to bind Mrs. Stoll, he laid his gun upon the bed; and the proof will show that Mrs. Stoll immediately tried to get that gun; and that the defendant produced from his pocket an iron pipe wrapped in paper and with that pipe he struck her across the forehead, dazing her; and that he immediately picked up the gun.

The proof will show that Mrs. Stoll then said to her maid, Ann Woollet, "Ann, get the other gun, the one we have."

The proof will show that Mrs. Stoll herself attempted to get it and that this defendant Robinson thereupon
354 struck her across the head just above the right ear with that iron pipe, breaking her head open and knocking her back on the bed in a dazed condition.

The proof will show that that wound bled profusely there upon Mrs. Stoll's bed.

The proof will show that this defendant Robinson then forced the maid at the point of a gun to continue the binding and taping of Mrs. Stoll. "Bind her wrists", he ordered. And at his direction, as he stood there with his gun, the maid, Ann Woollet, was forced to bind Mrs. Stoll's wrists. All of the time the blood caused by the blow on the head from this iron pipe was flowing from Mrs. Stoll's head on to her neck and kimono; and the proof will show that that did not deter this defendant in his attempt to

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bind her wrists.

After he had Mrs. Stoll bound, the proof will show, he then bound the wrists of Ann Woolet, the maid; he then bound the ankles of Ann Woolet and pushed her onto the floor where he left her.

The proof will further show you that this defendant at that time inquired as to the time Berry V. Stoll, the husband of Mrs. Alice Stoll, would return; that he said on that occasion, "If he returns I will kill him."

Having bound the maid and having bound Mrs. Stoll, the proof will show you that this defendant produced
355 from his pocket a ransom note which he threw there on the bed in the guest room. The proof will show that he then forced Mrs. Stoll to walk in front of him down the steps, out the door of her home and into the Tudor Ford automobile that he had rented from the Saunders-U-Drive-It Company.

The proof will show that he did permit her to get a coat which was thrown around her; that he forced her into that automobile, and forced her to lie on the floor just in front of the back seat; that he covered her with blankets and newspapers and drove away from the Stoll residence with his victim, Alice Stoll.

The proof will show that that ransom note, typed in red and black, bearing spots of the victim's blood, was found there in that guest room.

The proof will show that this defendant had intended originally to kidnap C. C. Stoll; that the envelope in which that note was contained was addressed to members of the Stoll family and in pencil is added "and Mr. Speed"; that there is scrawled across that envelope in pencil "\$50,000 for Mrs. Stoll".

The proof will show you further that that ransom note was typed on a Corona portable typewriter purchased by this defendant at the Meffert Equipment Company in Louisville, Kentucky, on July 8, 1931. The proof will show you that that typewriter was later recovered in his apartment.

356 Further, the proof will show you that after this defendant forced Mrs. Stoll from her home, her

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wrists bound, her mouth taped with adhesive tape, and forced her into the automobile where he then tied her ankles and covered her with newspapers and blankets, that he drove from Louisville, Kentucky, to Indianapolis, Indiana.

The proof will show you that at least on one occasion during that ride he stopped and spoke to someone. The proof can't show you who it was, but the proof will show you that on the evening of October 10, 1934, this defendant drove into a garage at the rear of an apartment house at 2735 North Meridian, the apartment house where this defendant had lived at Apartment No. 2 as Thomas W. Kennedy.

The proof will show you that when he arrived in that garage Mrs. Stoll was still covered with the blankets and newspapers and still on the floor of that automobile. The proof will show you that he locked the car and said to her, "I am going to see if the coast is clear. If you make a move I will bump you off." The proof will show that he returned in a few minutes to the automobile, saying that the coast was not clear and that they could not enter at that time.

The proof will show that they drove around Indianapolis for a short while, during which time this defendant unbound the feet of Mrs. Stoll, allowed her to sit on
357 the side of the automobile and later returned to that same garage where he forced her to enter the apartment at 2735 North Meridian, Apartment No. 2.

In the meantime, the proof will show you, here at Louisville Mrs. Stoll's husband, Berry V. Stoll, had returned home. There he found the envelope and in it he had found the ransom note, typed in black and red. And the proof will show that the ransom note, mostly typed on a typewriter, bears the printing in ink and pencil, intended for C. C. Stoll at first and then his address in type to members of the Stoll family, to which has been added in pencil "And Mr. Speed".

The proof will show you that the ransom note mentions "Stoll," referring to C. C. Stoll; that the ransom note threatens to kill the person kidnapped, scatter his ashes in a stream of water, clean the galvanized tank in such a

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manner as to defy microscopic examination. "There will be no ashes to analyze. This will keep the law from finding the corpus delicti or body of Stoll."

Further the proof will show you that this ransom note makes a demand for the payment of \$50,000; that the amount or ransom first placed in this note on the typewriter was \$30,000; that there is printed in ink on the top of the second page of that note these words: "The same for Mrs. Stoll, except the amount, \$50,000."

358 And further the proof will show that that ransom note directed that \$25,000 be paid in \$10.00 bills and \$25,000 be paid in \$20.00 bills. The proof will further show that in that note the kidnapper, Thomas Henry Robinson Jr. named as intermediary T. H. Robinson, 1716 Ashwood Avenue, Nashville, Tennessee; that he directed that this ransom money be placed in a package and that that package be shipped to Nashville, Tennessee, by railroad agency; that it be addressed to T. H. Robinson at the address I have pointed out; that it have a value of \$10.00 placed upon that package; and that for failure to comply with the terms of that ransom note, the life of his victim, Mrs. Alice Speed Stoll, would be taken.

The proof will show you that when her husband, Berry V. Stoll, came to that residence about five o'clock on the afternoon of October 10th, he found the maid, her wrists still bound; he found in the guest room the blood of his wife on the bed; that he found there the tape and wire; that he found there the iron pipe with which his wife had been struck.

The proof will show you that from that afternoon of October 10th and through the next few days there was a feverish attempt to comply with the instructions of this kidnapper. Fifty Thousand Dollars was secured; Fifty

359 Thousand Dollars was counted, the serial numbers were recorded by employes of the Fidelity & Columbia Trust Company on the night of October 11, 1934. Fifty Thousand Dollars was placed in a package just as this kidnapper had directed and that package, in accordance with his direction, was taken to the railway express office here in Louisville and addressed by express

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to T. H. Robinson of Nashville, Tennessee; the \$10.00 valuation was placed thereon and the package turned over to the employees of the railway express agency. That package was delivered in Nashville, Tennessee, to T. H. Robinson, the father of this kidnapper.

During that time, the proof will show, at Indianapolis, Indiana, where the defendant held Mrs. Stoll a prisoner, he was becoming increasingly angry, threatening again the life of Mrs. Stoll.

The proof will show that that apartment at Indianapolis consists of 3 rooms, a living room, a bed room and a kitchen. The proof will show that off of the living room and in between the living room and the kitchen there was a closet and the proof will show that when this defendant left that apartment, in his attempt to contact his intermediary and in his attempt to speed up the payment of the ransom money, he would on each occasion and did on each occasion tape the mouth of Mrs. Stoll, tie her hand and foot, and place her in that closet which he locked and left her in that condition until he returned.

360 And the proof will show that at night he tied her wrists, each of them, to the bed springs of her bed, and another cord to his wrist in another bed so that any move she might make would be known to him, and he tied her at night and on each occasion when he left.

The proof will show you that the first word received by the family of Alice Stoll from the kidnapper came on October 14, 1934, on Sunday at two o'clock in the afternoon when a telephone call came to a friend of Mrs. Stoll, a life-long friend, then Miss Elizabeth McHenry and now Mrs. Douglas Potter. The proof will show that this telephone call came to the home of Miss McHenry, the long distance operator saying that Henry Saunders wanted to speak to her; and the proof will show that Henry Saunders was a name well known to Miss McHenry and she accepted the call collect.

The proof will show then that that conversation continued and that this defendant said, "I am Mr. Cook of Scottsburg, Indiana. I have here a pair of alligator shoes with gold buckles, size 6AA, purchased at Sacks. I have

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here a sapphire ring mounted in diamonds. Does that mean anything to you?" "Yes," Miss McHenry replied, "they belong to Mrs. Stoll."

The proof will show you that this defendant, posing then as Mr. Cook of Scottsburg, Indiana, said, "Then I have a message for you. The police are watching
 361 Mr. T. H. Robinson; change the intermediary from T. H. Robinson to his daughter-in-law, Frances Robinson, the wife of this kidnapper. Instruct them not to follow Frances. Use your influence with the family to call off the police." The kidnapper, then posing as Mr. Cook, hung up.

The proof will show that that conversation was confirmed by letter dated October 14, 1934, from the victim herself, Mrs. Stoll, to her friend Miss McHenry. The proof will show that the letter started with the salutation "Dear Scout", a nickname known only to those two, a nickname that came down from their early childhood, and that the call made by this kidnapper was verified by that letter, "Dear Scout". "The phone call to you was okay. I asked the kidnapper to go somewhere and call you. He said he drove to Indianapolis to do so. The kidnapper knows that the police are watching the intermediary, and the kidnapper now wants the intermediary to deliver the money to Mrs. Frances Robinson, his daughter-in-law. She will or already has received instructions. This is the only person from whom and the only way the kidnapper will agree to accept the money. This is final. Do not attempt to try to call the person who called you or trace the call in any way. The person who called you was a friend of the kidnapper and will receive the money. Therefore instruct all my family to
 362 be sure that this daughter-in-law is not followed or interfered with in any way. If these instructions are followed I will be released unharmed within 24 hours. Otherwise I am sure they will carry out their threat. Get my family to use all their influence to withdraw the law from this case until I return. This is imperative."

The proof will show that that letter was written by Alice Stoll while she was held a prisoner by this defendant Robinson; that he dictated it and forced her to sign it;

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that that letter was mailed on Sunday October 14th, addressed to Miss McHenry, sent Special Delivery, and it arrived here in Louisville on Sunday night at about 11:30 p. m.

The proof will show that on the day previous to that, in that hideout at Indianapolis, while this kidnapper held Mrs. Stoll a prisoner, he forced her to write another letter, a letter dated Saturday October 13th and addressed

“Dear Intermediary:

“This is Alice Stoll writing. We are sending my wedding ring on which is engraved my name if you look inside closely. I am well and being treated nicely. I only have a slight cut on my head. If you haven’t already done so, please pay over the money to the one this man tells you to. (Signed) Alice Stoll. P. S. The man I am referring to is the man who is sending this letter to you with instructions. Of course you may have already paid it,
363 in which event please ignore this letter.”

The proof will show that attached to that letter was the wedding ring of Alice Stoll. The proof will show that she was forced by this kidnapper to write a letter to the victim’s own father which this kidnapper mailed in Indianapolis; and that on the same Sunday, October 14th the Sunday of the telephone call to Miss McHenry, and the Sunday of the letter to Miss McHenry, the proof will show you that another letter was written at the direction of this kidnapper, a letter to the victim’s husband, Berry V. Stoll:

“I only had a small cut on my head and it has healed and I am otherwise all right and being treated nicely. The kidnapper found out last night that the intermediary, Mr. T. H. Robinson, and his daughter-in-law were being watched and that he couldn’t give the money to his daughter-in-law because of the police. Both the kidnapper and I believe that you meant to deliver the money in good faith but that you are being double-crossed by the police. My life depends on this daughter-in-law not being shadowed so she can deliver the money. The kidnapper will not accept any other person other than this daughter-in-law to

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deliver the money. Therefore you must for my sake see that this girl is not interfered with or followed to her destination.

"I sent a letter with my wedding ring to Mr. T. H. Robinson.

"Because the law is double crossing us the kidnappers refuse to release me until twenty-four hours after they receive the money from this girl.

"I know this is my last chance to be returned alive. If the money is delivered all right I will be released unharmed.

"Much love,
Alice."

365 From Wednesday until Sunday, Wednesday the 10th until Sunday the 14th, those letters were written. This kidnapper had been becoming increasingly apprehensive, increasingly angry that the money had not reached him, changing intermediaries, ordering the family to withdraw the police, to get away from the officers of the law.

The proof will show you that that letter addressed "Dear Mr. Intermediary" was enclosed in a letter from this defendant to his father, T. H. Robinson, Sr., by air mail, special delivery, and delivered at Nashville, Tennessee, that he typed that letter to his father "Dear Mr. Intermediary" and signed it "The Kidnapper", that in that he gave instructions about the payment of the \$50,000.00 to Frances Robinson, and about its delivery by her. And the proof will show you that on each of those letters, upon the ransom note, the letter from Mrs. Stoll, the letter from this kidnapper, all bear the fingerprints of Thomas Henry Robinson, Jr. who sits before you in this court. They were written, the proof will show you, those of them which were typed, were written on that Corona portable typewriter purchased by him at Meffert Equipment Company on July 8th, 1931. And the proof will further show you that on Tuesday, October 16th, 1934, at about 9:00 o'clock in the morning, there came to that apartment too, at 2735 North Meridian, Frances Robinson, the wife of this defendant; that she brought with her
366 \$50,000.00 of ransom money, and there in that apart-

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ment delivered to this kidnapper \$50,000.00; that he inquired of her if she had any good money, and she turned over to him a quantity of money in addition to the ransom money; that he reached into that package and pulled out a small package of money which he delivered to his wife, Frances Robinson. The proof will show you that that package contained \$470.00 of that ransom money.

The proof will show you then that this defendant threatened to again tape and tie Mrs. Stoll, leave her there in that apartment by herself; that she pled with him not to tie her, not to tape her, not to place her in that locked closet and leave her there after he had received the \$50,000 that he had demanded. And the proof will show you that he had at that time prepared a letter addressed to the custodian of that apartment house, saying to that custodian:

“You are a working man. You deserve some consideration. There may be some reward for the one who finds Mrs. Alice Speed Stoll who was kidnapped. I know you need the money. I do not want to see a policeman get the reward as he is an agent of the rich capitalists and levies his salaries and bribes on the capitalists. Therefore, I want you to discover Mrs. Stoll and get any reward offered. Go to my apartment and you will find her in the closet next to the bath room door. Offer her my apologies for having to treat her thus, but it was the only way whereby I had time to hide out successfully. I trusted her as she was a good sport and not like the type of rich pampered girl I expected. She could even cook. (Signed) Mr. Kennedy, Apartment 2, 2735 North Meridian.”

His plans laid, the proof will show you, to abandon Mrs. Stoll there in that apartment, an apartment in which the shades had been drawn for over a week, an apartment in which he had held her prisoner, an apartment, in which there was no reason for anyone to enter. He was about to leave her there, leaving this note for the custodian to find her at some later date.

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The proof will show you that she pled with him, that Mrs. Frances Robinson refused to accompany him, and that he left them both there in that apartment with instructions to remain there in that apartment. The proof will show you that this defendant then left that apartment; in his possession was \$50,000.00 less \$470.00.

The proof will show you that Mrs. Stoll, still worried, still in fear of her life, still weak, remained there, and that within thirty minutes, the proof will show you, this kidnapper popped back into that apartment to determine whether or not Mrs. Stoll had left or any alarm
368 had been spread, and again threatened her life should she leave that apartment.

The proof will show you that she remained there until about 2:00 P. M. on that October 16th, 1934; that about 2:00 o'clock in the afternoon she did leave that apartment, weak, suffering from the wound on her head, nervous, upset and excited. She was able to walk one block to the drug store where she and Mrs. Robinson found the address of a Reverend Clegg, a relative of the Stoll family, unknown to Mrs. Stoll until she read in an Indianapolis newspaper that the Cleggs were relatives of the Stoll family, and in the taxicab, the proof will show you, she went to Reverend Clegg's home.

The proof will show you that she had been instructed, threatened, her very life threatened if she attempted to get in touch with her family, and so she called her friend, Miss McHenry, the one who had received the telephone calls from the kidnapper, and told her she was coming home, and on the afternoon of October 16th, 1934, the Reverend Clegg and his wife started from Indianapolis, Indiana to Louisville with Mrs. Robinson and Mrs. Stoll. They were overtaken, the proof will show, by agents of the Federal Bureau of Investigation, at Scottsburg, Indiana, and Mrs. Stoll was returned to her home that night by agents of that Bureau.

The proof will show you that at that time, a week from the time she was taken forcibly from her home, she
369 returned, her head matted with blood, her lips raw from the adhesive tape that had been placed over

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them and jerked off by this kidnapper, her wrists with marks from the wire, generally upset, nerves completely shattered. The proof will show you that she was immediately placed in bed and a doctor called to attend her.

In the meantime, in Indianapolis, the proof will show, agents of the Federal Bureau of Investigation, had descended upon the hide-out in the apartment at 2735 North Meridian, and there were found the typewriter, the wire, the adhesive tape, the kimono. The proof will show you that during the time Mrs. Stoll was held prisoner there she had removed the kimono and had put on a dress belonging to Mrs. Robinson which was in the apartment. Those things were found, together with this letter addressed to the custodian saying that Mrs. Stoll would be found in a closet. Those things, members of the jury, will be introduced in evidence so far as they are now available, nine years after the offense. The proof will show you that some of them are available. Some of them, unfortunately, are not. They will all be described to you by the testimony of witnesses who saw them, witnesses who saw the bedspread, witnesses who saw a little silk bag there at the Stoll residence used by this kidnapper to wipe the blood from his hands before he forced Mrs. Stoll from her home, witnesses who saw that guest room with the
370 wire, the tape and the blood, witnesses who saw the typewriter, the tape, the wire and the kimono in Indianapolis. They will all be introduced for your consideration.

The proof will show you that this defendant, Thomas Henry Robinson, having then carried out his kidnapping of Mrs. Stoll, having then secured \$50,000.00 of ransom money, fled from Indianapolis in that same Ford automobile he had rented in Chicago from the Saunders-U-Drive-It, and on October 16th, 1934, he drove from Indianapolis to Springfield, Ohio, where he registered as Jerry Dobson and where he abandoned that car in a garage at Springfield, Ohio.

The proof will show you that he went from Springfield to Cleveland, to New York, where we find him registered at the Hotel New Yorker as T. M. Wakefield, a representa-

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tive of Johns-Manville Company, Waukegan, Illinois. And the proof will show you that on December 24th, 1934, he was registered at the Waldorf-Astoria Hotel in New York as T. M. Warner of Lake Forrest, Illinois; that on January 8th, 1935, he was registered at the Ritz Carlton Hotel in New York as Morton Wallis of Oak Park, Illinois.

The proof will show you that in his efforts to elude capture by agents of the Federal Bureau of Investigation, by police of Louisville, of Kentucky, and of the entire United States, he moved repeatedly from place to place, changing his name, seeking to change his identity.

In January, 1935, the proof will show you he made
371 a trip from New York to Los Angeles, California, and at the Ambassador Hotel, the proof will show you, on January 17th, 1935 he was registered as Neill Martin. At the Los Angeles Biltmore Hotel, on January 18th, the proof will show you he was registered as Leslie K. Burgess. The proof will show you that in 1935, under the name of Leslie K. Burgess, he purchased a three thousand dollar Packard sedan automobile; that he went back to New York in that Packard, and that he lived in New York in many and varied places, under different names, which will be disclosed to you by the evidence, and there in Forrest Hills Fireproof Storage Company he rented a two drawer filing cabinet for the safe-keeping of his property.

And the proof will show you that on December 5th, 1935, he was back in the West at Silver City, New Mexico, again assuming the name of L. K. Burgess and attempting to purchase a ranch.

The proof will show you that during the rest of December, January, February, March and April of 1936, he lived at various places, under various names, finally moving to 510 Cavanaugh Street, Glendale, California.

The proof will show you that on May 11th, 1936, agents of the Federal Bureau of Investigation surrounded the house at 510 Cavanaugh Street, Glendale, California; that
372 when a special agent knocked on the front door of that house, this kidnapper Robinson, alone in the house, answered the door; that he was then taken into custody by agents of the FBI who searched that premises

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and found on the person of this defendant a loaded 45 caliber Colts automatic which he was unable to use. In the house they found two 25 caliber Colts automatics, a shot gun, a 38 revolver, and quantities of ammunition for all of those firearms.

And further, the proof will show you that agents found there in that house, in the house and on the person of this defendant, \$4687.64 in cash; \$2330.00 of that money being original ransom money paid over for the release of Mrs. Stoll.

That, members of the jury, is in brief the testimony that will be introduced by the United States. Many witnesses will be required. Some of them will be required to testify to many facts. Some of them will be required to testify to one or two of the facts that make up the picture of this crime. And for that reason, I wanted to discuss that with you, that you may see how each part of this testimony fits into the completed picture of the crime of kidnapping charged in this indictment, for that is the proof the United States will rely upon to sustain that charge.

The Court: Will the defense make its opening statement at this time or reserve it until later?

373 Mr. Hogan: The defense elects to reserve its opening statement.

The Court: Before we proceed, then, with the evidence on behalf of the Government, we will take a short recess, so the jury can move around and rest themselves.

Do not discuss this matter among yourselves or with anyone, or permit anyone to talk about it in your presence. The Marshal will show you upstairs to one of the jury rooms where you will find yourselves some ease and comfort and rest.

We will convene again in approximately ten minutes. The Marshal will give us a recess.

(At this point a short recess was taken, after which the hearing was resumed, as follows:)

The Court: Are you ready with the first witness for the Government?

Mr. Brown: Call Mr. Henry Wehmhoff.

Testimony of Henry Wehmhoff

HENRY WEHMHOFF, called as a witness on behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the Jury.

A. Henry Wehmhoff.

Q. Where are you employed, Mr. Wehmhoff?

374 A. I am an investigator in the Alcohol Tax Unit, Louisville.

Q. That's the federal service?

A. Yes, sir.

Q. From what school or college are you a graduate?

A. Cornell University.

Q. When did you graduate there?

A. 1928.

Q. What degree did you receive?

A. C.E.—Civil Engineer.

Q. Following that time, did you work as a civil engineer?

A. Not as a civil engineer; no, sir.

Q. What employment did you have immediately after that?

A. Immediately after school, or shortly thereafter, I was an engineer for the Electrical Research Products Company, Incorporated, a subsidiary of Western Electric Company.

Q. When did you come into the government service?

A. In December, 1934.

Q. Have you had experience in surveying and platting real estate?

A. Yes, sir.

Q. On November 15th and 16th, 1943, did you go to the Stoll residence on Lime Kiln Lane?

A. Yes, sir.

375 Q. In Jefferson County, Kentucky?

A. Yes, sir.

Q. Did you survey that residence and the property surrounding it?

A. With the assistance of Investigators Lallinger and

Testimony of Henry Wehmhoff

Campbell, the survey was made,

Q. As a result of that survey, did you make a plat, a drawing of that property?

A. Yes, sir.

Q. Is this the plat?

A. That is.

Mr. Hogan: Your Honor please, I submit that this witness has not been properly qualified as a maker of maps. He says he is a graduate of Cornell as a civil engineer, and the only other qualifying question was, "Are you experienced?" That's a conclusion of the witness.

The Court: Do you wish to qualify him any more, Mr. Inman.

Q. I will ask you whether you have had much or little experience in making surveys and plats, Mr. Wehmhoff?

A. Yes, sir. I have had, since 1934, or, rather, since 1935, the first time I made a survey with the Government, I have made several in various parts of Kentucky and Tennessee.

Q. And as far as making a plat following a survey, have you had much or little experience in that?

A. Well, the plat was made after each survey was made.

Q. Are you able to properly reproduce on the plat the information secured from your survey?

A. Yes, sir.

The Court: Is that kind of work included in the course leading to a civil engineer degree?

The Witness: Yes, sir.

The Court: Any further objection?

Mr. Hogan: I would like to take him on his qualifications, Your Honor.

The Court: All right. Suspend for a moment, Mr. Inman.

Mr. Hogan: You have since 1934 been employed by the Alcohol Tax Unit, have you not, Mr. Wehmhoff?

The Witness: Yes, sir.

Mr. Hogan: Your business for that department has been the investigation of violations of the alcohol tax unit

Testimony of Henry Wehmhoff

laws, has it not?

The Witness: Yes, sir.

Mr. Hogan: Locating and finding the operation of stills?

The Witness: And other violations of the liquor laws.

377 Mr. Hogan: Violations of the—

The Witness (Interrupting): Internal Revenue laws pertaining to liquor.

Mr. Hogan: You have not during that period of time and during your employment with the Alcohol Tax Unit been required to make any maps, have you?

The Witness: Yes, sir, on several occasions I have been required to make similar maps.

Mr. Hogan: Have you ever made any maps and used them in court as part of your testimony?

The Witness: Yes, sir; that was the purpose of making the maps.

Mr. Hogan: Is that map that you have displayed there drawn to scale?

The Witness: Yes, sir; the scale of one inch equals sixty feet.

Mr. Hogan: You may have him back, Mr. Inman.

Mr. Inman: Is the objection withdrawn?

Mr. Hogan: I think he is qualified.

(Direct-examination resumed by Mr. Inman.)

Q. Mr. Wehmhoff, will you take this pointer and point out to the jury the Lime Kiln Lane?

A. Lime Kiln Road is indicated—the River Road is about a mile or so North of this map—starting at this point the Lime Kiln Road runs as indicated by the pointer
378 South, then in a Westwardly direction to this point, then in a Southerly direction where it runs into the Brownsboro Road some several miles to the South. (Indicating on map.)

Q. Now where is the entrance to the Berry V. Stoll home located?

A. The entrance is located at this point where the private road leaves the Lime Kiln Road running in an Eastwardly direction to the home. (Indicating on map.)

Testimony of Henry Wehmhoff

Q. How far is it from the gate to the residence?

A. By air line it would be 738 feet from the gate to the residence, that is, the shortest distance between the two points.

Q. Is it a little further by the road?

A. Yes, sir.

Q. Show the boundaries of the Berry V. Stoll farm.

A. Well, the boundaries as shown here, the fences are shown, I don't know whether they are the bounds of the entire property, but they start at this point.

Q. That is under fence?

A. Under fence, at the junction where this private road running back to Mr. Humphrey and Mr. Hieatt's home, then running in an Eastwardly direction beyond this point some, I should say, a thousand feet possibly beyond this point, but excluding that, the fence then runs from this point Northwardly to an old gravel road which
379 run out into a pasture and the fence is then continued. we did not make those measurements, but followed this road as indicated here. (Indicating on map.) However, the other boundary line runs along in a Northerly direction to this point above the Old House, and then in a Westwardly direction back again to Lime Kiln Road, and thence to the starting point. As I say, I don't know whether this includes all of the property owned by the Stoll estate.

Q. How far is it from the house, the residence, to the nearest point of Lime Kiln Road?

A. Well, the straight—looking from the house directly toward the road as indicated here, it measures 601 feet.

Q. Now, there are certain blocks indicated in black and red, Mr. Wehmhoff. Tell the jury what those are.

A. Well, the blocks marked with the red as indicated are the Stoll home, Old House, Sallee, Wilcox, Becker, Prentiss and Hieatt, and also a tenant house, indicate residences which were located at this scene in 1934. The block without the red marking would indicate houses built since 1934.

Q. That would include the Humphrey home, would it not?

A. Yes, sir, and the Clark home, being the nearest

Testimony of Henry Wehmhoff

homes to the Stoll house.

380 Q. Now, of those marked in red, Mr. Wehmhoff, what is the nearest residence or what was the nearest residence to the Berry V. Stoll residence in 1934?

A. The C. C. Heatt home, which was 502 feet Southeast of the Stoll home.

Q. I will ask you to introduce that plat with your testimony as Government Exhibit No. 1.

A. I will, sir.

(The above described plat was handed to the reporter, marked Government Exhibit "No. 1" and filed with the record.)

Mr. Inman: That's all.

Mr. Hogan: No questions.

GEORGE L. STRAIN, next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. George L. Strain.

Q. Are you a special agent of the Federal Bureau of Investigation?

A. I am.

Q. To what field office are you now attached?

A. The Louisville field office.

381 Q. In November of 1943, did you go to the Berry V. Stoll residence on Lime Kiln Lane?

A. I did.

Q. At that time did you take photographs of that residence?

A. I did.

Q. I will show you these photographs and ask you if these are the photographs you took.

A. They are, with the exception of this one.

Q. Now, I show you this photograph and ask you to

Testimony of George L. Strain

tell the jury what that is.

A. This is a photograph of the entrance to the Berry V. Stoll farm.

Mr. Hogan: I suggest, Your Honor, that those be designated by some mark or letter so they will be identified.

The Court: All right. Your Map is Exhibit No. 1, isn't it?

Mr. Inman: Yes.

Q. I will ask you to introduce that photograph with your testimony as Exhibit No. 2.

Mr. Brown: Why don't you mark them all at one time?

Mr. Inman: All right.

(The photographs referred to were handed to the reporter and marked for identification Government Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively.)

Q. The picture you have just marked Government Exhibit No. 2, does that fairly and accurately represent the entrance gate from the Lime Kiln Lane?

A. It does.

Q. Now, examine these that have been marked Nos. 3, 4, 5, 6, 7, 8, and 9, and tell the jury what those photographs represent.

A. This photo that is marked Government Exhibit No. 3 fairly and accurately represents a photograph of the Stoll home on approaching it after leaving the gate some little distance.

The Court: I might say to the jury, that after these have been identified and explained by the witness, the jury will have an opportunity to pass them around and see them. This is just to let you understand at the present what each picture represents.

A. (Continuing) Photograph marked Government Exhibit No. 4 fairly and accurately represents a photograph of the Stoll home taken from the front of the home.

Photograph marked No. 5 represents a view of the Stoll home taken from the left of the home as you are facing the home.

Photograph No. 6 also represents a view of the home

Testimony of George L. Strain

taken from the left at a closer distance.

383 Photograph marked No. 7 is a view of the home taken from the side nearest Lime Kiln Road.

Photograph No. 8 represents a view of the home as taken from Lime Kiln Road at a point where the road turns.

Photograph No. 9 is a view of the home taken from the front at a greater distance than I believe Photograph No. 4 is taken from.

Q. Now, I will show you photograph marked Exhibit No. 10, and ask you to tell the jury what that is.

A. This is a photograph of the Stoll home as taken from the air.

Q. Does that fairly and accurately represent the Stoll home and the farm?

A. It does.

Q. I will ask you to file these photographs with your testimony as Government Exhibits Nos. 3, 4, 5, 6, 7, 8, 9 and 10, as they are marked.

(The photographs heretofore marked for identification were handed to the reporter and are filed with the record as Government's Exhibits Nos. 3, 4, 5, 6, 7, 8, 9 and 10.)

(The photographs were then passed to the jury for examination.)

Cross-examination by Mr. Hogan.

Q. What did you say your business is, Mr. Strain?

384 A. I am a special agent of the Federal Bureau of Investigation.

Q. Did you, yourself, take this No. 10 photograph from the air?

A. No, I did not.

Q. Who did take it?

A. That I don't know.

Mr. Hogan: I move to exclude No. 10.

The Court: Were you ever in an airplane over the place?

The Witness: No, I have never been.

Testimony of George L. Strain

The Court: You are not able to say then, that it is an accurate representation from the air, are you?

The Witness: From the air, no, I have never been in the air over the place.

The Court: Motion sustained. The jury will not consider picture No. 10 which was exhibited to you. It is withdrawn from your consideration.

Mr. Inman: Are you through, Mr. Hogan?

Mr. Hogan: Yes, that's all. Wait just a minute, Mr. Strain, I will recall you.

Q. Did you take these other photographs?

A. Yes, I did.

Mr. Hogan: That is all.

385 J. DAWSON VAN EPS, next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. J. Dawson Van Eps.

Q. Are you a special agent of the Federal Bureau of Investigation?

A. Yes, sir.

Q. To what field office are you now assigned?

A. I am assigned to the Indianapolis field office.

Q. Indianapolis, Indiana?

A. Yes, sir.

Q. I show you these photographs and ask you if you took them.

A. I took all of those, sir.

Q. Where did you take these pictures, Mr. Van Eps?

A. Those are pictures of the apartment building at 2735 North Meridian Street, Indianapolis, Indiana. They are both interior and exterior shots.

(The photographs referred to were handed to the reporter and were marked for identification Government Exhibits Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and

Testimony of J. Dawson Van Eps

23, respectively.)

Q. I'll show you one marked Government Exhibit No. 18.

A. That's a photograph of the rear of the same apartment house.

Q. I'll show you the one marked Government Exhibit No. 23.

A. That's a photograph of the alley at the rear of the apartment house.

Q. I will show you the one marked Government Exhibit No. 11.

A. That's a photograph of the garage, the garage being the one in the middle of the picture, behind 2709 North Meridian Street.

Q. I will ask you whether or not the garage is the one with the doors open.

A. It is.

Q. I will show you the picture marked Government Exhibit No. 22.

A. That's a photograph taken between two apartment buildings, one being 2735 and the other 2725 North Meridian Street.

Q. Mr. Wynn, the man whose picture is in this photograph is looking at one of the buildings. Which building is he looking at?

A. He is looking at 2735 Meridian Street.

Q. At what apartment in that building?

387 A. Apartment No. 2.

Q. I'll show you the picture marked Government Exhibit No. 20, and ask you to tell the jury what that is.

A. This is a picture of the back porch of Apartment No. 2, showing the door and the bath room window.

Q. I'll show you Government Exhibit No. 19 and ask you to tell the jury what that is.

A. That's a photograph of the rear of the apartment house at 2735 North Meridian Street.

Q. Now, on which floor is apartment No. 2, with reference to the floors shown in that picture?

A. This is the ground floor. Actually, this is the basement in the apartment.

Testimony of J. Dawson Van Eps

Q. The basement, then, is flush with the ground?

A. That's right, sir; at the rear of the building, that is there.

Q. What is known as the first floor is one floor up, is that right?

A. That is true; yes, sir.

Q. I will show you Government Exhibit No. 21.

A. That again is a picture taken between 2735 and 2725 North Meridian Street.

Q. The same as shown, the one with Mr. Wynn in it, Government Exhibit No. 22?

A. That's the same photograph except for Mr. Wynn.

388 Q. I'll show you Government Exhibit No. 13.

A. That's a close-up shot of the rear entrance. That's the entrance to the kitchen of Apartment No. 2 at 2735 North Meridian Street.

Q. What is the window shown?

A. That's the bath room window.

Q. Of Apartment No. 2?

A. Yes, sir.

Q. I'll show you Government Exhibit No. 17 and ask you to tell the jury what that is.

A. That's an interior photograph of the living room of Apartment No. 2 at 2735 North Meridian Street.

Q. I'll show you Government Exhibit No. 15 and ask you to tell the jury what that is.

A. That's a photograph of the closet which is located in the Southwest corner of the living room in Apartment No. 2.

Q. Is that near the bath room door?

A. Yes, sir; just to the left of the bath room door as you enter the bath room.

Q. I'll show you Government Exhibit No. 16 and ask you to tell the jury what that is.

A. That's a photograph of the same closet except that there is a chair in the closet at the time that photograph was taken.

389 Q. There is also a chair in the other, isn't there?

A. Yes, sir.

Testimony of J. Dawson Van Eps

Q. What is the difference, then?

A. The chair has been changed in position.

Q. In No. 15 which way is the chair seated, frontways or sideways.

A. Sideways.

Q. And in No. 16?

A. Frontways.

Q. They are pictures of the same closet, is that right?

A. That's true.

Q. I will show you Government Exhibit No. 14.

A. That's another photograph of the same closet.

Q. With what addition?

A. Mr. Earl Wynn is sitting in the closet.

Q. That's the gentleman sitting here at counsel table?

A. Yes, sir.

Q. I will ask you to file those photographs with your testimony as they are marked, as Government's Exhibits.

The Court: Numbers what through what?

Mr. Inman: Numbers 11 through 23.

(The photographs heretofore marked for identification were handed to the reporter and are filed with the record as Government Exhibits Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, respectively.)

390 Mr. Hogan: May I ask a question before the jury takes a look at these?

The Court: Suspend looking at the pictures for a moment, please. Just put the pictures on the rail.

Mr. Hogan: Mr. Van Eps, when were these photos taken?

The Witness: They were taken on November 5th, 7th, and 8th, on three different days.

The Court: What year?

The Witness: 1943.

Mr. Hogan: Were you present when they were taken?

The Witness: Yes, sir; I took the photographs.

Mr. Hogan: You, yourself, took them?

The Witness: Yes, sir.

Mr. Hogan: Were you with the FBI in 1934?

The Witness: No, I was not, sir.

Testimony of J. Dawson Van Eps

Mr. Hogan: You are not able to say that those photographs represent the true situation that existed inside and outside of that apartment in 1934, are you?

The Witness: I cannot do that.

Mr. Inman: We will show that, Your Honor.

Mr. Hogan: Subject to their connecting it up, Your Honor, we will reserve our objection.

The Court: They will have to be connected up, of course.

Mr. Inman: Yes.

391 Mr. Brown: We can only put one witness on at a time.

Mr. Inman: I take it that the jury may, then, examine the photographs?

The Court: Yes.

(The photographs referred to were passed to the jury for examination.)

Q. Mr. Van Eps, I will show you this drawing entitled "Floor Plan of Apartment No. 2, 2735 N. Meridian Street, Indianapolis," and I will ask you if you have examined that drawing.

A. Yes, sir; I have.

Q. Have you been in Apartment No. 2 at 2735 N. Meridian, Indianapolis, Indiana.

A. Yes, sir; I have.

Q. And have you measured that apartment?

A. Yes, sir.

Q. Have you compared your measurements to the measurements shown on this drawing?

A. I was with Mr. Thornton, the architect, when he made those measurements.

Q. And do the measurements that you made and the measurements on here coincide?

A. Yes, sir; they do.

The Court: Is the drawing a fair and accurate representation of the floor plan of that apartment?

A. It is drawn to scale, sir; it is.

392 Q. I will ask you, Mr. Van Eps, to take this pointer and step down here and point out to the jury the floor plan of that apartment?

Testimony of J. Dawson Van Eps

A. First of all this is a court here and the entrance to Apartment No. 2 is here. The entrance is marked "Entrance."

The Court: What floor?

Witness: Second floor.

Q. It is above what you pointed out as the basement floor?

A. Yes, sir. You go up 8 steps and then turn to the left and go through a small vestibule and you enter the living room.

Q. What is the size of the living room?

A. 18 feet 6 inches by 11 feet 8½ inches. The ceiling is 8 feet 11 inches high.

Q. All right. Now what door leads from the living room?

A. There is a door opening out from a closet in this corner of the room (indicating).

Q. Now that closet has an outside entrance doesn't it?

A. Yes, sir, it does.

Q. Yes. Now where is the bath room?

393 A. Right here (indicating). It is 7 feet 6¾ inches by 5 feet 10¼ inches.

Q. Is there a door leading from the living room to the bath room?

A. Yes.

Q. Is there a closet next to the bath room?

A. Yes, sir, this closet which is 30½ inches by 32 inches.

Q. That is next to the bath room?

A. Yes.

Q. Now this government exhibit which is a picture of the closet with a chair in it and show the jury where that closet is located in that apartment?

A. The closet that you see the photograph of there is this closet (indicating on the map). That picture was taken from about this position.

Q. Does that closet have an outside window?

A. No, sir.

Q. What surrounds it on the four sides?

A. There is another closet to the left of the closet in

Testimony of J. Dawson Van Eps

question. Of course on the opposite wall, this represents a wall, is the kitchen, and there is a bath room cabinet here, and this is a cabinet.

Q. And a living room in front?

A. That is right.

Q. Then it is pretty much in the center of that
394 apartment, isn't it?

A. Very definitely.

Q. Now you show a bed closet there. What do you mean by that?

A. At the present time that contains a roll-away bed.

Q. A Murphy bed?

A. Yes, sir.

Q. Now where is that bedroom?

A. This was intended, when the architect drew the plans for the apartment, to be used as a dining room but it is now used as a bed room, and this is a bed room.

Q. Is there a door leading from the bed room into the living room?

A. Yes.

Q. That is indicated right here?

A. Yes, sir.

Q. And is there an outside door to the bed room?

A. There is another door leading into the kitchen.

Q. None leading outside of the apartment?

A. No, sir.

Q. Where is the kitchen?

A. Just right to the right of the bed room here.

Q. And the drawings here are the cabinets and the sink?

395 A. This is the sink, and these are built-in kitchen cabinets.

Q. Where is the rear door?

A. This is the rear door at the right side of the kitchen.

Q. That is the door shown in Government Exhibit No. 20?

A. That is the door as shown in that exhibit.

Q. And when you go out of the rear door, are you on a porch?

Testimony of J. Dawson Van Eps

A. Yes, sir.

Q. And the steps lead down from that porch?

A. Yes, this is the porch and the steps going up and the steps going down.

Q. Is that indicated in this exhibit?

A. That is upsidedown, sir.

Q. Now how many outside doors are there to that apartment?

A. Including the entry door, there were two—the kitchen door and this door.

Q. Well this door goes into a hall, the one marked “vestibule”?

A. That is right.

Q. Into an inside hall?

A. That is right.

396 Q. What is the size of the bath room window shown in Government Exhibit No. 13?

A. The size of the glass in that window—well it is known as a two-light, 16 by 16 window, which means that the size of the glass used in the window is 16 inches square.

Q. I will ask you to file that drawing with your testimony as Government Exhibit No. 24?

A. All right.

(The above drawing marked Government Exhibit No. 24 was handed to the Reporter and filed with the record.)

Q. Now examine that map again, Mr. Van Eps, and tell the jury how many windows are in the living room and how many windows in the bed room?

A. Three windows in the living room, and three windows in the bed room.

Q. And how many in the kitchen?

A. One window in the kitchen.

Q. Now with reference to the other apartments in that Apartment Building at 2735 North Meridian, do they adjoin this apartment?

A. Yes, sir.

Q. Is this an end apartment?

Testimony of J. Dawson Van Eps

A. No, it is between two other apartments.

Q. Then beyond this solid wall here—

397 A. (Interrupting) There is another apartment.

Q. And beyond this entrance is there another apartment?

A. Yes, sir, there is.

Q. And above that is there one?

A. Yes; there is another floor—I presume there is another apartment.

Q. You have never been up there?

A. No, I have never been up there.

Q. And the basement floor is underneath that?

A. That is right.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. Suppose you step down here with your pointer, Mr. Van Eps.

A. Yes, sir.

Q. Now these straight lines indicated on this drawing at an oblique angle with these marks, are they supposed to be doors?

A. They represent doors.

Q. And the traveling of the door as it opens?

A. That's right.

Q. I see a space here just West of the bath room, 398 is there not another bath room, or the bath room to the front apartment that is located in that space right there?

A. I have never been in any other side apartment—only Apartment No. 2.

Q. So you are unable to say about that?

A. That is true.

Q. What is the width of this cabinet shown to be in the bath room?

A. This scale is three-quarters of an inch equivalent to one foot. That is approximately—if I had a rule I could tell you.

Mr. Hogan: Has anybody got a rule?

Mr. Brown: I have one.

Testimony of J. Dawson Van Eps

The Court: Mr. Marshal see if you can get a rule.

Mr. Brown: We have one.

A. That is a little over one foot in width.

Q. That cabinet is located to your left as you enter into the bath room, isn't it?

A. Yes it is.

Q. And it extends out from the wall, as you say, something over one foot?

A. That is correct.

Q. And what is the length of this cabinet from this point to that point? I suppose you will need the rule again.

399 A. I measured that shelf and it is $12\frac{1}{4}$ inches in width.

Q. And what is the length of it?

A. I can only say that this closet is 32 inches deep and the cabinet is very close to that denomination.

Q. So the cabinet, according to your best judgment, is as long as that closet is deep, or 32 inches, approximately?

A. That is right.

Q. Do you know what the cabinet is used for?

A. Well to keep brushes and—

Q. (Interrupting) It is a linen closet, isn't it? For towels?

A. I believe so.

Q. Now is this representative of the location of the bath tub in the bath room?

A. That is right.

Q. And this is the location of the medicine cabinet?

A. No.

Q. And does that represent the medicine cabinet?

A. No; that represents the lavatory bowl.

Q. But above that lavatory bowl or wash basin do you know whether there is located a medicine cabinet?

A. I do not.

400 Q. Now what does this figure represent here?

A. That is a toilet stool.

Q. A regular toilet stool similar to those found in most bath rooms, I take it?

A. That is correct.

Testimony of J. Dawson Van Eps

Q. Then the bath room window you speak of is just opposite the location of the toilet stool?

A. That is right.

Q. Does that bath room window open? That is, can you open the window?

A. Yes, sir; I opened it.

Q. You know that yourself because you opened it?

A. Yes, sir.

Q. In other words, does the bottom glass move upward, and does the top glass move downward?

A. I do not know about the top glass; I just moved the bottom glass up.

Q. You are certain then that the bottom glass is capable of being moved up?

A. *Yes, sir.

Q. Now when that bottom glass is moved upward, what is immediately opposite there?

A. The rear porch.

Q. These are the risers or stairs going to the upper apartments by the rear?

401 A. That is correct.

Q. These are risers or stairs going down to the ground itself which is between the apartment at No. 2735 North Meridian and the adjoining apartment, No. 2725 North Meridian Street?

A. Yes.

Q. Do you know or did you measure the width between the two apartments?

A. Yes, sir.

Q. Tell the jury that width?

A. 8 feet and 1 inch.

Q. Or 97 inches?

A. Yes.

Mr. Brown: We will stipulate that it is.

Q. Now with reference to the side of the apartment located at No. 2725, does that apartment building have windows opposite to the windows of the bed room of this apartment No. 2 that you speak of and refer to?

A. My recollection is that there is a window directly opposite this window which is to the extreme right and

Testimony of J. Dawson Van Eps

another one opposite the extreme left.

Q. Now, are the windows opposite the bed room windows of Apartment No. 2 on a level with those windows or higher or lower?

A. I do not know the answer to that.

402 Q. Do you know the distance from these windows of bedroom No. 2 to the ground?

A. Yes I do.

Q. Please tell the jury that distance?

A. You are referring to the bed-room windows?

Q. Yes?

A. The distance from the sill to the ground is 5 feet 6 inches.

Q. Now when you refer to sills, do you refer to the brick sills or to the wood sills?

A. I refer to the distance from the top of the brick sill to the ground.

Q. And that distance is what?

A. 5 feet 6 inches.

Q. 66 inches?

A. Yes, sir.

Q. What is the distance from the brick sill of the windows of the living room to Apartment No. 2 to the ground outside?

A. I don't have that measurement.

Q. What kind of a door is to be found at the entrance to living room at Apartment No. 2? That is, wood or glass?

A. There is no door where you pointed at—this is the door.

403 Q. Well, I might have missed it a few inches.

A. That is a wood door.

Q. The entrance door to the living room is what I refer to?

A. That is a wood door.

Q. Is that a thick door, or a panel door, or just what type door is that?

A. That is a panel door.

Q. Now, directly opposite the entrance door to Apartment No. 2 is entrance door to the front apartment, isn't,

Testimony of J. Dawson Van Eps

there?

A. Yes, sir.

Q. Does that door that opens into Apartment No. 1—is it the same type of door that opens into the living room of Apartment No. 2?

A. I did not examine it closely but I believe it is.

Q. How many windows are shown and how many exist on the front of the living room looking out into the court of this apartment building?

A. Three.

Q. What is the distance or height of those living room windows from the floor?

A. They are about the ordinary height.

404 Q. Did you make any measurements of that?

A. I made no measurements, but they are rather standard.

Q. Well, with reference to the height of these windows in this court room, would you say—

A. (Interrupting) Slightly lower than that.

Q. In your judgment about how much lower?

A. About a foot lower.

Q. The windows in this court room are approximately the height from the floor as represented on the length of this pointing stick—would you measure that and let us have it accurately?

A. Yes, sir—approximately 26 inches.

Q. While you have never measured the height of those bed room windows in Apartment No. 2—

A. (Interrupting) I have measured the bed room windows.

Q. I mean the height of the living room windows—your best recollection is that they are about 26 inches from the floor?

A. That's right, but that is purely guesswork.

Q. You could be wrong?

A. Definitely. All I can say is that they are standard height. I mean, they appear like the windows in most homes in regard to the distance from the floor.

405 Q. Now, you say when you were there this month when this drawing was prepared there was a Murphy

Testimony of J. Dawson Van Eps

bed in this middle closet off of the living room?

A. That is right.

Q. And of course you do not presume to say what was there in October 1934?

A. No; I do not.

Mr. Hogan: That is all.

The Court: Members of the Jury, we will not have any night session tonight, but do not discuss this matter among yourselves or with anyone or permit anyone to talk about it in your presence; avoid contact with anyone that might be interested in this case.

We will reconvene at 9:30 tomorrow morning.

406 Convened pursuant to adjournment at 9:30 a. m.

Wednesday, December 1, 1943, and proceeded with the trial as follows:

The Court: Are you ready to proceed, gentlemen?

Mr. Brown: Yes, Your Honor.

CLAIR M. HILL, was called by the government as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name?

A. Clair Mendon Hill.

Q. Where do you live?

A. 4319 North St. Louis, Chicago, Illinois.

Q. In July of 1934 where did you live?

A. 4639 North Magnolia, Chicago.

Q. By whom were you employed in July 1934?

A. Mr. George R. Archambeault.

Q. And in what capacity were you employed?

A. Assistant Manager in the apartment building.

Q. Was that apartment building located at 4639 North Magnolia?

A. Yes, sir.

Q. During July 1934 who was in charge of that apartment?

Testimony of Clair M. Hill

407 A. I was.

Q. Was Mr. Archambeault, the owner, in the City of Chicago?

A. No, sir.

Q. About the middle of July 1934 did you rent Apartment No. 205?

A. Yes, sir.

Q. To whom did you rent that apartment?

A. A gentleman and his wife, Mr. John Ward.

Q. John Ward?

A. That is the name he gave me.

Q. Had you seen Mr. John Ward before that time?

A. No, sir.

Q. How did you find out that was the name?

A. That was the name he gave me when I asked him his name to sign on the rent receipt.

Q. Have you seen that Mr. John Ward since that time?

A. Only in the newspapers.

Q. Do you see him in the court room now?

A. Yes, sir.

Q. Who is the man who told you he was John Ward?

A. The gentleman sitting in the center there.

Q. The one in the middle?

A. Yes, sir.

408 Q. Robinson?

A. Yes, sir.

Q. Was anyone with him when he rented that apartment?

A. His wife.

Q. I will show you this photograph—

A. Yes.

Q. And ask you if you recognize the person whose picture that is?

A. His wife.

Q. That is the person you knew as Mrs. John Ward?

A. Yes, sir.

Mr. Hogan: I suggest that is leading.

The Court: Well it is leading but it doesn't seem to be any serious matter. Frame your question in a different way, Mr. Inman.

Testimony of Clair M. Hill

Q. By what name did you know the person whose picture that is?

A. Mrs. Frances Robinson.

Q. I will ask you to file this photograph with your testimony as government Exhibit No. 25?

A. Yes, sir.

(The above photograph was handed to the Reporter, marked Government Exhibit No. 25, and filed.)

Q. How long did Robinson and his wife live in
409 that apartment as Mr. and Mrs. John Ward?

A. About 21½ months.

Q. Under what conditions or what time of day or night did they leave that apartment?

A. The only time I found out was when the landlord told me in the morning that they had gone.

Q. It was between sun-down and sun-up?

A. That is right.

Q. During the time that Robinson lived there as John Ward, did you discuss with him, or did he discuss with you, where his father lived?

A. He said his father lived in Evansville.

Q. Indiana?

A. Yes, sir.

Q. Tell the jury whether or not at any time he left Chicago, or told you that he was leaving Chicago?

A. He told me at one time that he had a wrecked car and that he was going down to see about it.

Q. And where did he say the wrecked car was?

A. In Evansville.

Q. How long was Robinson gone on that occasion?

A. Three or four days.

Q. Did he then return to that apartment?

A. Yes, sir.

Mr. Inman: That is all.

410 Cross-examination by Mr. Hogan.

Q. Mr. Hill, did you know what Mr. Robinson's business was during the time he stayed at that apartment?

A. No, sir.

Testimony of Clair M. Hill

Q. Was he employed?

A. He told me that he had a job coming up, and that he was expecting to be called.

Q. You saw him from day to day and night to night?

A. Yes.

Q. He did not work during that time?

A. That is right.

Q. What was his conduct and behavior during that time?

A. It was very good.

Q. By that do you mean that it was sober and well behaved?

A. Yes, sir.

Q. I will ask you if it isn't true that Mr. Robinson was drinking rather heavily during that period?

A. Well he had some, and I had gone out with him for drinks myself.

Q. So you had gone out with him for some drinks?

A. Yes, sir.

Q. So he wasn't the sober man that you just said
411 he was?

A. Well he wasn't tight. Anybody who drinks a little bit gets noisy, I guess.

Q. Well did you get noisy?

A. No, sir.

Q. Did he?

A. No, sir.

Q. Well you said a moment ago that anybody who drinks a little bit gets noisy--

A. Well you do yourself.

Q. I don't drink, so I don't get noisy. Well, Mr. Hill, did you go out with him just one time?

A. Yes, sir.

Q. How many times?

A. Once.

Q. Did you know of his going out when you were not in his company?

A. No sir, I had other work to do in the building there.

Q. Well isn't it a fact that he stayed out frequently

Testimony of Clair M. Hill

at night until the early hours of the morning?

A. Now I didn't keep in touch with him.

Q. Didn't you know that—

A. (Interrupting) That was none of my business.

412 Q. Regardless of whether or not it was your business, didn't you have knowledge that he was staying out late?

A. Well I didn't check on that, sir.

Q. But my question is not whether you checked on it or whether it was any of your business, but whether you knew about it?

A. I didn't stay up late at night to find out if he did.

Mr. Hogan: I will ask the Court to have the witness answer the question.

The Court: Mr. Hill, I think that you, by implication, have answered but you have not made a direct answer. Did you know it whether you found it out or whether it was your business to know—did you know at all?

Witness: No, I didn't.

Q. Did he discuss with you at any time what his business was?

A. He said something about a garbage burner.

Q. And he was there 2½ months?

A. Yes, sir.

*Q. Did he seem to have sufficient finances to carry himself?

A. Yes, sir. The only way I knew about it was that he paid his rent the first of the month, and after the landlord came back I didn't have anything else to do with it, and so he was out of my hands.

413 Q. You collected the rent from Robinson only one month?

A. Yes, sir.

Q. Then Mr. Archambeault returned and you did not have anything more to do with the collection of that rent?

A. That's right.

Q. Did any of the other tenants complain of the conduct in the John Ward apartment?

A. No, sir.

Q. Mr. Hill, to refresh your recollection, don't you

Testimony of Clair M. Hill

recall that on this trip, or on some trip that you were with Mr. Robinson, that you and he went to a bar or grill and Mr. Robinson got into an argument with some fellows?

A. No, sir, I don't.

Q. You don't recall that?

A. No, sir.

Q. Would you say that that did not happen?

A. I don't know; I don't recall that.

Mr. Hogan: That is all.

Redirect Examination by Mr. Inman.

Q. Mr. Hill, did you live in that apartment house at the same time Robinson lived there?

A. Yes, sir.

414 Q. How close was your apartment to his?

A. Right next door.

Mr. Inman: That is all.

J. E. SAUNDERS was called as a witness by the government and, after having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name?

A. Joe Saunders.

Mr. Brown: Mr. Hogan, is Mr. Ross going to be used as a witness?

Mr. Hogan: I am not prepared to say.

Mr. Brown: Well I want him excluded if he is.

Mr. Hogan: Let me talk to him and then I can tell you more about it. (Later) We can't say definitely but there is some probability that he probably will be used as a witness.

Mr. Brown: I think he should be excluded.

The Court: All right, Mr. Ross.

(Mr. Ross leaves the court room.)

Q. Where do you live, Mr. Saunders?

A. 811 Vine Street, Park Ridge, Illinois.

Testimony of J. E. Saunders

Q. Is that near Chicago?

415 A. That's right—it is a suburb.

Q. In what business are you engaged?

A. Renting automobiles on the Drive-It-Yourself system.

Q. What is the name of your company?

A. The company name is Chicago Automobile Leasing Company, where the trade name is Saunders system.

Q. Is there any other name?

A. Saunders Drive-It-Yourself system.

Q. And that is the name you have over your place of business?

A. That is the trade name, but not the name of the company.

Q. Were you engaged in that business in Chicago in 1934?

A. Yes.

Q. How long have you been engaged in that business?

A. Twenty-seven years last August.

Q. On September 20, 1934, were you in your office in Chicago?

A. Yes, sir.

Q. I will show you this paper and ask you to tell the jury what that is?

A. It is a form we use whenever a new customer applies to rent a car. It is a credit or identification form, also a rental contract. On this form we accumulate the information about the customer. His physical description, address, place of employment, period of time employed there and references, in an effort to—

Q. (Interrupting) What is the name of the customer who made out or supplied the information for that form?

A. The name given us was John W. Ward.

Q. What address?

A. 4639 Magnolia, Chicago.

A. Have you seen that person since that information was supplied?

A. That is right.

Q. Who was he?

A. Robinson.

Testimony of J. E. Saunders

Q. Was anyone with him at that time?

A. Yes; his wife.

Q. I show you government Exhibit No. 25 and ask you if you recognize that picture?

A. This seems to be a likeness of the woman that was with him.

Q. Did you wait on Robinson?

A. I did.

Q. At that time?

A. I did.

417 Q. What was the date of that transaction?

A. September 20, 1934.

Q. Will you tell the jury what information Robinson supplied you at that time?

A. He gave me his physical description, of which I could observe, too. Age 27; weight 160; height 6 feet 1 inch; hazel eyes; black hair. He said he lived at the address of 4639 Magnolia; telephone Edgewater 1858. He said he was in Chicago—had been in Chicago about 3 months, and that he was associated with the Western Conservation Company manufacturers of some kind of garbage disposal equipment of some kind; and he said that company was his father's company. He also said he was formerly employed by the Servel Corporation, that is, refrigeration people, at Evansville, Indiana, as an auditor. He gave as reference George R. Archambeault, the hotel manager where he lived, at 4639 Magnolia, the apartment house—furnished apartments. He said he had rented cars from us at Nashville, and also the Matthews Brothers who are engaged in the automobile rental business at Nashville. The Western Conservation Company had an address in Evansville, the Old National Bank Building (the word "old" is a part of the name of the building.) He said John W. Ward, Sr. was his father with offices at the Old National Bank Building.

Q. In what town?

418 A. Evansville, Indiana. He said he had a checking account in the First National Bank at Evansville, Indiana—or a savings account. I don't recall which. He signed this document which was supposed to be a confirma-

Testimony of J. E. Saunders

tion on his part that the information he gave us was true. And then I also signed the form myself.

Q. Was it signed in your presence?

A. Yes.

Q. By Robinson?

A. That's right.

Q. Did you immediately rent him the automobile?

A. No, I didn't. I spent about a half hour with Robinson at the time.

Q. Why didn't you immediately rent him an automobile?

A. It was against our policies to rent an automobile to any individual who could not give a reference, one reference, that we thought was capable of giving us information as to his general responsibility. He could only give us a reference as the manager of a hotel and his acquaintanceship with that manager was only a period of some 3 months. So we realized that the manager of the hotel would not really be able to intelligently speak of his general responsibility. So as a result of that and in keeping with our policy I told Ward, or Robinson, that we
419 could not rent him a car. He then told me that he had been renting cars at some of our former stations, and especially the one at Nashville, and he spoke merely of the name of one of the employees there who at the time I recalled. So that fact plus the fact that Robinson made a very favorable impression, I finally decided to violate our own rule and give him the car. He further stated he only wanted the car for a matter of a few hours or during the evening. This transaction all occurred around 6:30 in the evening, and that he merely wanted to pick up an aunt who was arriving from Tennessee at the depot, and needed the car to transport the luggage and this Aunt and all of this luggage out to his apartment which was some 6 miles North of the business loop, in Chicago. So, with his selling of himself, you might say, and—

Q. (Interrupting) Now just describe his appearance, Mr. Saunders?

A. Well Ward, or Robinson, at that time was a young man 27 years of age; he had a rather boyish appearance,

Testimony of J. E. Saunders

and a rather boyish expression, although he was very calm over the situation that I had refused him a car. He did not immediately accept that as a cue to become riled up and excited. In fact he had considerable poise, I thought, and he made a very intelligent conversational talk in order to get the car. He was dressed nicely and not flashy, **420** and he did inspire confidence, very definitely.

Q. And you did violate your own rule and rent him a car?

A. That, plus the fact that his wife was with him and when I called the landlord where he lived the landlord said—

Mr. Hogan (Interrupting): Object.

The Court: Objection sustained.

Q. Well did you get favorable or unfavorable information when you called the landlord?

A. Very favorable.

Mr. Hogan: Same objection.

The Court: Objection sustained. The jury will not consider that answer.

Q. Did you contact any other references?

A. No, sir. There was no other reference that he could give.

Q. What kind of a car did you let him have?

A. It was a 1934 Ford, Tudor sedan.

Q. And I believe when I interrupted you a while ago you were speaking of his wife being with him?

A. That's right.

Q. Will you just go on with that?

A. Well the fact that he had his wife with him, and the impression they both made was just that of a very **421** nice appearing young couple, substantiated by checking on the appearances so far as we could check; and it just seemed that the mere fact that he did not have a reference in Chicago was merely because he had only been there 3 months. He appeared like he would have them if he had been there longer.

Q. Now what kind of an automobile did he get there?

A. A Ford Tudor sedan.

Q. Do you have the full description of that car on that

Testimony of J. E. Saunders

paper?

A. No, I do not.

Q. Was that car returned to you after a few hours?

A. It was not. We did not see the car again for a matter of weeks.

Q. When did you next see Ward or his picture, Mr. Saunders?

A. Approximately 3 weeks after that. I don't know exactly, maybe a little bit longer, I was in Kansas City and I had an occasion to buy a Kansas City Star and on the front page of the Kansas City Star was an account of the Stoll kidnapping case, and a picture of a man who was suspected, and after I had looked at the picture while riding the streetcar, I finally came to the conclusion that that was the fellow that I had rented the car to in Chicago.

422 So I reported that fact to the FBI in Kansas City, who immediately—

Q. (Interrupting) Now, not what they did, but you did report to them. Is that right?

A. That is right.

Q. Do you recall when that car was returned to you?

A. I don't recall the exact date but I know it was weeks and maybe as much as two months.

Q. I show you that and ask you if that refreshes your recollection?

Mr. Hogan: I have not seen that.

(Mr. Inman hands paper to counsel.)

Q. Does it refresh your recollection?

A. Yes, sir.

Q. Now if that does refresh your recollection, can you now tell the jury when you got that car back?

A. Yes. I got the car back November 9, 1934.

Q. From whom?

A. We got this from the FBI.

Q. Where?

A. At Louisville, Kentucky.

Q. What is the description of that car, Mr. Saunders?

A. Well it is a Ford V 8—

423 Mr. Hogan (Interrupting): Wait just a minute. Let me see that paper again, please (getting paper.)

Testimony of J. E. Saunders

A. It was a 1934 Ford V 8 coach, Motor No. 574117. They don't have a serial number.

Q. Now immediately after, shortly after September 20, 1934, the day that car was rented, did you have occasion to write a letter setting out the full description of that car?

A. I did.

Q. Does that refresh your recollection (handing paper to the witness)?

A. Very much so.

Q. Will you tell the jury the license number and full description of that automobile?

A. 1934 Ford, V 8, coach, black body, yellow wheels, bearing a 1934 Illinois license No. 331-700.

Mr. Hogan: What is the license number again?

Witness: 331-700.

A. (Continuing) Also a Chicago city license, a windshield sticker, No. 1869890. Motor No. 574117.

Q. And now you said coach. Is that the same or different from a Tudor?

A. That is the same in Ford language.

Q. Is your business confined to Chicago, Mr. Saunders?

424 A. No.

Q. In what parts of the country do you do business?

A. At what time?

Q. 1934?

A. Well most of the middle West.

Q. Was this car insured against theft?

A. No, sir.

Q. What is the situation with reference to that?

Mr. Hogan: I object.

The Court: Objection sustained.

Q. I will ask you to file this original contract with your testimony as Government Exhibit No. 26?

A. All right.

(The document above described was handed to the Reporter, marked Government Exhibit No. 26, and filed with the record.)

Testimony of J. E. Saunders

Q. Under the terms of the contract agreement between you and Robinson, did Robinson have a right to keep that car as long as he did?

Mr. Hogan: Now wait before you answer that. I object to that.

The Court: Objection sustained. The contract speaks for itself on that point.

Mr. Brown: Just stop now and read that part of the agreement.

425 The Court: Mr. Inman, suppose you and Mr. Hogan see if you can take out the part of the agreement that you want read and agree on it without reading the whole contract to the jury.

(After conference between Mr. Inman and Mr. Hogan:)

Mr. Hogan: The government has indicated that it desires to read the first literary paragraph of the exhibit which appears in bolder type than the rest of the exhibit.

Q. Will you read that paragraph?

A. Yes. "I agree to return the automobile within eighteen hours of the time let, and to pay the company from which the automobile is rented promptly when due all charges which have accrued from such rental, and to return the car to them in good condition, ordinary wear and tear excepted. Should any damage occur to the car while in my possession, I agree to pay the reasonable damages necessary to put the car in the same condition as when received by me."

Q. Did he return that car within 18 hours?

A. He did not.

Q. Did he pay over-charges on it?

A. He did not.

Mr. Inman: That is all.

426 Cross-examination by Mr. Hogan.

Q. Mr. Saunders, you say you operated these systems in the middle West?

A. I was interested some in the middle West, outside of Chicago.

Q. You had one at Louisville at that time, I believe, didn't you?

Testimony of J. E. Saunders

A. No. I had sold the one in Louisville prior to 1934.

Q. Did you have one in Nashville in 1934?

A. No, sir, prior to that.

Q. Had you had one there before that?

A. Yes.

Q. And when did you dispose of your interest in the one in Nashville.

A. In 1931.

Q. Did you have managers at these various locations?

A. That is right.

Q. Who was your Nashville manager?

A. Frankly I forget his name now. I had 85 of them scattered around over the country, and there were considerable changes.

Q. Was it not Charles Matthews?

427 A. At one time Charles Matthews was our manager.

Q. To the best of your recollection, was he your manager at the time you discontinued the Nashville station?

A. No, I don't think so.

Q. Now, when Robinson and you were discussing the financial status or Robinson and you were turning over in your mind whether or not to allow him to have one of those cars, didn't he advise you then that he knew Mr. Matthews of Nashville?

A. Yes, he did.

Q. I believe he told you on that occasion that he and Mr. Matthews lived in the same block there in Nashville?

A. I don't recall that part.

Q. And you, of course, at that time knew Mr. Matthews, didn't you?

A. I had not seen him for a number of years at that time.

Q. You knew who he was, didn't you?

A. Yes.

Q. Did you make inquiry of Mr. Matthews about this boy?

A. No.

Q. You did discuss this matter for at least 30 minutes with him?

Testimony of J. E. Saunders

A. Approximately.

428 Q. You took a chance on him?

A. That's right.

Q. He sold himself as you said?

A. That is right. He made a very favorable impression.

Q. He made a better impression than the average or ordinary young man, did he not?

A. That is right.

Q. Did he evidence any natural salesman talk or ability—natural or unnatural, I will say?

A. Well I will say that he did. And in his mannerism and in the general way he conducted himself. He wanted the car and he wanted to sell me on the idea of renting the car to him, and he did.

Q. And he was very suave about it?

A. Yes, and a little sort of Charles Ray boyish attitude.

Q. Now by Charles Ray, do you refer to the movie actor?

A. That is right.

Q. Charles Ray at that time was very prominent as an actor?

A. That is right, as interpreting the character of these younger men in small communities—yes.

Q. And he was very attractive, then, wasn't he?

429 A. He was that.

Q. More so than he is today, nine years later?

A. That is right.

Q. Considerably more so?

A. Yes, sir.

Q. You say this car had a black body?

A. That is right.

Q. And what color wheels did it have?

A. Yellow.

Q. Now did you report the car as missing to the Chicago police or any other enforcement officers?

A. I did.

Q. You did not state that on direct examination. Was there any reason for withholding that information?

Testimony of J. E. Saunders

A. I don't think I was asked that question.

Q. Was it put out over the radio that that car was missing?

A. Whether or not the authorities did that, I don't know.

Q. When did you report it as missing?

A. Probably the next day—maybe the second day.

Q. Well did you wait the 18 hours, specified in that agreement?

A. Very definitely.

Q. You knew from his mannerisms and his voice
430 that he was not an Illinois person?

A. That is right.

Q. Did you detect from his speech or his mannerisms that he was a southerner?

A. I did.

Q. And you knew that he knew Mr. Matthews who had formerly worked for you?

A. He did tell me that—that is right.

Q. Did you ever make any inquiry of Mr. Matthews about a boy or a man meeting the description of this man here?

A. No, sir.

Q. You did not do that?

A. Not that I recall.

Q. Well you would recall it if you had?

A. I think so.

Q. Wouldn't that have been the logical thing to have done.

A. You are right.

Q. You did not check at any time, subsequent to the time he rented the car or that it was missing, whether or not John Ward had lived in Nashville, Tennessee, in the same block with your Mr. Matthews?

A. I checked a number of Wards in Nashville—in fact—that letter you saw is a copy of one of the letters that I wrote to one of the Wards.

431 Q. But did you inquire of anybody in Nashville in the residence block in which your Mr. Matthews resided as to a man meeting the description of this man?

Testimony of J. E. Saunders

A. I did not know where Matthews lives or did live in Nashville.

Q. You could have easily determined that, could you not?

A. That is right.

Q. You could have put in a long distance call and determined that?

A. Correct.

Q. Did you do that?

A. I did not.

Q. Did the Chicago police or detectives or any law enforcement officers of Cook County, Illinois, ever find any trace of that car or report back to you its location?

A. They did not.

Q. They did not?

A. I do not believe that the Chicago police gave us the final information as to the recovery of the car or where it was recovered. I think we got it from the FBI. I may be in error on that.

Q. That was November 9, 1934?

A. That was the date we received the car back in Louisville. We might have been notified a day or two sooner.

432 JOHN H. ROHMAN was next called as a witness in behalf of the Government, and being duly sworn was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. John H. Rohman.

Q. Where do you live, Mr. Rohman?

A. 2019 Sherwood Avenue.

Q. Here in the City of Louisville?

A. City of Louisville.

Q. During the year 1934—

Mr. Hogan: (Interrupting) I object to this witness testifying because his address is shown to be 2019 Sherwood Avenue, Jefferson County, Indiana.

Testimony of J. E. Bosler

Mr. Brown: Technically, that is correct. It was obviously an error. You may stand down.

J. E. BOSLER next called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Joseph E. Bosler.

Q. During the year 1934, Mr. Bosler, what business were you in?

A. Tyler Hotel business.

Q. Were you the owner or operator of the Tyler Hotel?

A. Yes, sir.

Q. Had you been in that business for a number of years?

A. Since 1915 to 1940.

Q. I will show you two cards and ask you what they are.

A. These are guest registration cards.

Q. What Hotel?

A. Tyler Hotel, Louisville.

Q. Do you recognize those as two of the guest registration cards used by you at your hotel?

A. Yes, sir.

Q. Would you take the first one, the earliest date, and tell the jury the date of the registration and the name that appears thereon?

A. September 7th, John Ward.—

The Court: What year, please?

Mr. Brown: We will have to get that later.

A. The year is not on the card, Your Honor. (Continuing) 211 Union Avenue, Memphis, Tennessee. You want the second one.

434 Q. That's the first one. Let's introduce this and mark it for identification as Government Exhibit 27.

Testimony of J. E. Bosler

Mr. Hogan: That's objected to unless they connect it up with some year.

Mr. Brown: We certainly will connect it up. We are marking it merely for identification.

The Court: It is understood the year will be supplied.

(The registration card referred to was handed to the reporter and marked for identification Government Exhibit No. 27.)

Q. All right, what is the next one?

A. The next one is October 8th, registrant John Ward, 211 Union Avenue, Memphis, Tennessee.

Mr. Brown: Let's introduce this and mark it for identification as Government Exhibit No. 28.

(The registration card referred to was handed to the reporter and marked for identification Government Exhibit No. 28.)

Q. Now, Mr. Bosler, will you examine both of those cards and tell the jury the price room and type room that was assigned to the registrant on that card?

A. On September 7th this room 625 is a room on the North hall with shower bath at \$1.75 a day. On October 8th, the room 529 is also a room on the North hall with shower bath at \$1.75 a day.

435 Q. Could you tell the jury whether the charge of \$1.75 indicates to you, with reference to the year, what year it may be?

A. Yes, sir, it does, because all our rooms heretofore were always \$2.00 and up per room per day with bath.

Q. From that information contained on that card, what in your best judgment is the year as disclosed by those registrations and the indication thereon.

A. It is the year 1934.

Q. Of course, you do not know who signed the name of John Ward—I mean personally.

A. No, sir, I do not.

Mr. Brown: I would like to introduce those as Government Exhibits 27 and 28.

Testimony of J. E. Bosler

(The registration cards heretofor marked for identification were handed to the reporter and are filed with the record as Government Exhibits 27 and 28.)

Q. Do you recall the kidnapping of Mrs. Stoll?

A. Yes, sir.

Q. To whom were those cards delivered and when?

A. To an FBI agent.

Q. When, with reference to the kidnapping?

A. Well, I wouldn't know the exact number of days, but it was within a month, I am sure.

Q. After?

A. After the abduction.

436 Q. At that time were they the regular and usual card records of the Tyler Hotel?

A. Yes, sir.

Q. Were they current for that period at that time?

A. Yes, sir.

Mr. Brown: You may ask the witness.

Mr. Hogan: Your Honor, I submit that the identification of these cards has not been established that they were used in the regular course of the business.

Mr. Brown: I asked him and he said they were.

The Court: Was it the regular course of business of the Tyler Hotel at that time, Mr. Bosler, to have and keep cards of that kind for guest registration?

The Witness: Yes, sir.

The Court: And were those cards which you have there made and kept in the regular course of business of the Tyler Hotel at that time?

The Witness: Yes, sir.

The Court: Any further objection on that score?

Mr. Hogan: No further objection on that particular point.

Cross-examination by Mr. Hogan.

Q. In the regular course of business of the Tyler Hotel at that time, wasn't it the usual course to affix the
437 year of the registration as well as the month and day.

A. No, not the usual thing; no, sir.

Q. Was it customarily done?

Testimony of J. E. Bosler

A. No, sir.

Q. You mean that you then permitted just the month and day to be inserted on the card?

A. On the individual card, but when this card was filed according to a room number it was filed according to the month and the year.

Q. Then you have another record that you have not brought to court.

A. No, just the file box would be the only record, but that would show the month and the year together.

Q. But I say, you do have another record, or did have at that time another record that if you had it here would establish the year?

A. That's right.

Q. You did not bring that with you.

A. No, sir. That was not taken at the time that these cards were taken, so, of course, it is not in existence at this period.

Q. You mean it has been destroyed?

A. I would say so, after nine years, yes, sir.

Q. When did your rates increase for that type of room from \$1.75 to \$2.00?

A. To \$2.00?

438 Q. Yes.

A. Well, of course, the exact date I could not say again, but then as soon as the depression was over, naturally the rates went up.

Q. Without trying to pin you down to an exact month or day, what is your best judgment as to the time after the date there?

A. I would say within the next year, possibly year and a half, these same rooms would go back to \$2.00 at least.

Q. Had those rooms formerly been \$2.00?

A. Yes, sir, and even higher.

Q. When did you lower them \$1.75?

A. There again, I can't give you the exact date, but it would be probably in '32 or '33.

Q. You did not see the man who wrote that name on there.

Testimony of J. E. Bosler

A. No, sir.

Q. You are not able to identify that person or anybody who is purported to have written that name on there?

A. No, sir.

Mr. Hogan: That's all.

Mr. Brown: That's all.

WILLIAM A. GROVES was next called as a witness for the Government, and having been first duly sworn was examined and testified as follows:

439 Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. William A. Groves.

Q. Where are you employed?

A. Southern Bell Telephone & Telegraph Company.

Q. How long have you been employed there?

A. About forty-one years.

Q. In what capacity are you employed?

A. Commercial representative.

Q. I'll show this book and ask you to tell the jury what it is.

A. Telephone directory of listed subscribers in the City of Louisville and Jefferson County, and part of Oldham County.

Q. For what period of time?

A. This book was an issue of June, 1934.

Q. Does that give the names and addressess and telephone numbers of the subscribers to the Southern Bell Telephone & Telegraph Company in Louisville and surrounding territory as of October, 1934?

A. It would.

Q. Will you refer to Page 164 in that book and tell the jury if Stoll, Berry V. is listed there.

A. Yes, sir.

Q. Will you read that complete entry?

440 A. Stoll, Berry V., R, which signifies residence. Lime Kiln Road, telephone No. East 2941.

Testimony of William A. Groves

Q. Does the entry Stoll, Charles C. appear on that page?

A. Yes, sir.

Q. Will you read that complete entry?

A. Stoll, Charles C., residence 2535 Cherokee Parkway, Highland 0701.

Q. Does the entry Stoll, George appear there?

A. Yes, sir.

Q. Will you read that complete entry?

A. Stoll, George, residence 2539 Cherokee Parkway, Highland 1328J.

Q. I will ask you to file that telephone directory with your testimony and mark it Government Exhibit No. 29.

A. I do.

(The telephone book referred to was handed to the reporter and filed with the record as Government Exhibit No. 29.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. What does the suffix "J" after "Highland 1328" indicate?

A. It would be a party line.

Q. Does Highland 0701 indicate a straight line 441 or private line?

A. Individual line; yes, sir.

Q. Does "East 2941" indicate an individual line?

A. Individual line.

Q. Is a party line or was a party line then less expensive than a straight line?

A. Oh, yes, a party line is always less expensive.

Q. Was it then?

A. It was.

Q. So Mr. George Stoll had a party line or a less expensive line than Berry V. Stoll or Charles C. Stoll.

A. Yes, sir.

Q. What was the difference in the monthly rental or charge of a straight line as distinguished from a party line at that time?

Testimony of William A. Groves

A. At that time I think there was a differential of one dollar.

Mr. Hogan: That's all, Mr. Groves.

Mr. Inman: That's all.

ELLA SCHAAF was next called as a witness for the Government, and having been duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

442 A. Miss Ella Schaaf.

Q. Where do you live?

A. At Snellville, Indiana. That's my home town.

Q. In October of 1934, where were you employed?

Mr. Hogan: I object to that for her residence is shown to be 2139 Edgehill Road, Louisville, Jefferson County, Kentucky.

Q. Do you live there now?

A. Now I live there.

Q. At 2139 Edgehill Road, Louisville?

A. Yes, that's where I work now.

Q. Is that where you live?

A. That is not my home town.

Q. Not your home town, no.

A. I live there now. I work there now.

Q. Your room is there?

A. Yes, sir.

Mr. Hogan: I still object, Your Honor.

The Court: How much time do you spend there? Do you sleep there?

The Witness: Sleep there.

The Court: Take your meals there?

The Witness: Yes, sir.

The Court: And you merely go back to Snellville, Indiana on visits?

443 The Witness: On visits, and in the summertime on vacations.

Testimony of Ella Schaaf

The Court: At the present time and for a month or so past you have been living here at this—

The Witness: I went down to my country town Sunday.

The Court: Just for a visit?

The Witness: Yes.

The Court: A day or two?

The Witness: A day.

The Court: Other than that you have been living regularly at this address here in Louisville.

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. Hogan: Let's determine when she took this residence here in Louisville.

The Court: Go ahead.

Mr. Hogan: This is without prejudice or waiving any of my rights to object to her as a witness, Your Honor.

The Court: Yes.

Mr. Hogan: When did you first start coming to this address at Edgehill Road in Louisville?

The Witness: I worked there nine years before this happened.

Mr. Hogan: No, I mean with reference to the present time, have you been back in Indiana subsequent to 444 October, 1934? When did you come from Indiana to work at this Edgehill Road address?

The Witness: Six years.

Mr. Hogan: And what is your address that you work at here at Edgehill Road?

The Witness: 2139.

Mr. Hogan: Have you been working continuously at that address for six years?

The Witness: Except vacations.

Mr. Hogan: Who lives at that address?

The Witness: H. B. Caldwell.

Mr. Hogan: What is Mr. Caldwell's business?

The Witness: Ohio Sand Company.

Mr. Hogan: You say, except for visits or vacations to your home town—

The Witness: Or sickness. When I was sick I would go home.

Testimony of Ella Schaaf

Mr. Hogan: All right, I will leave whether or not she may testify to Your Honor, to rule upon.

The Court: I think the objection should be overruled.

Mr. Hogan: Exception.

Q. (Mr. Inman continuing) In October of 1934, where did you work, Miss Schaaf?

A. What?

Q. In October of 1934, where did you work?

445 A. C. C. Stoll's residence.

Q. Where was the C. C. Stoll residence?

A. 2535 Cherokee Parkway.

Q. In Louisville, Kentucky?

A. Louisville, Kentucky.

Q. Was there any other entrance to that house, other than 2535 Cherokee Parkway?

A. Yes, sir.

Q. Where was the other entrance?

A. 2520 Longest Avenue.

Q. Which entrance was usually used by the family and friends of the family?

A. 2520 Longest.

Q. Is there any particular reason for that?

A. Yes.

Q. What was it?

A. On account of the steps. They had more steps to go the front way, 2535 Cherokee Parkway were more steps to climb than 2520 Longest.

Q. Do you recall the occasion of the kidnapping of Alice Speed Stoll?

A. Yes, sir.

Q. A short time prior, a day or so prior to that kidnapping, did anyone come to the door at 2535 Cherokee Parkway?

A. Yes, sir.

446 Q. Do you recall what day that was?

A. It was two days before it happened, the kidnapping happened.

Q. Two days before the kidnapping?

A. Yes, sir.

Mr. Hogan: Now that's objected to. I would like the

Testimony of Ella Schaaf

witness to designate the day and the month.

The Court: Yes, instead of describing it that way, Miss Schaaf, can you give the approximate date of the month?

The Witness: It was October 8th.

Mr. Hogan: That's still objected to, unless she gives the year.

The Witness: 1934.

Q. Did you answer the door?

A. Yes, sir.

Q. Who was there at the door?

A. A man, said he was a telephone man.

Q. What did you say to him?

A. Well, I said to him, "Our telephone was not out of order," and he said he was a lineman, he wanted to use the phone to call out on the line, and I said—

Mr. Hogan: Now, that's objected to. She merely said a man.

Mr. Brown: We will have to get to it and we will connect it.

447 The Court: If the Government indicates that this man will be identified—

Mr. Brown: He will be.

The Court: — as participating in this case, making the evidence competent, it may be admitted with that in view. Unless that assurance is given, of course, the objection should be sustained. Will the witness identify the man?

Mr. Brown: Yes, sir.

Q. Have you seen the man since?

A. Yes.

Q. Who was he?

A. Robertson Thomas, the kidnapper — Roberts Thomas.

Mr. Hogan: That's objected to.

The Court: Yes, the description which you gave him as your own will be ignored by the jury and the objection to that description will be sustained, but you can tell if you know the man's name or if you see him here in the court room.

The Witness: Yes, I see him.

Testimony of Ella Schaaf

The Court: Who is he?

The Witness: The kidnapper.

The Court: Miss Schaaf, I told you once and I will tell you again, I don't want you to describe him in that way. You can tell his name. The jury will not consider that description that this witness gave of the man she
448 referred to.

The Witness: Thomas Robinson, Jr.

Q. Miss Schaaf, what conversation did you have with Robinson there at that door? Just go on with your conversation.

A. Well, he wanted to come in and use the telephone, and, as I told you, I told him the telephone was not out of order, and he said he was a lineman. So I said, "How do I know you are a telephone man," and he reached in his pocket and said, "I can show you a card." So he drew his card and held it up and showed it to me.

Q. Where was he at that time?

A. He was on the outside of the screen porch and I was on the inside of the house behind the screen door. I couldn't read it, but I seen he had a card.

Q. Were there two doors between you?

A. Yes, two doors between us.

Q. And the width of the porch?

A. Yes, the width of the porch.

Q. Did you read that card?

A. I couldn't read it.

Q. What did you do after he showed you a card?

A. I said, I had orders not to let anybody in the house unless I knew who they were, and he said, "That's right, Lady. You never know when you let a crook in." That's the words he said.

449 Q. Did you then let him in the house?

A. Then I let him in.

Q. What did he do?

A. He went to the telephone and called.

Q. How long was he there?

A. A very few minutes; I judge three minutes.

Q. What was his appearance with reference to his dress? How was he dressed?

Testimony of Ella Schaaf

A. Well, he was dressed in a striped suit, as far as I can recall.

Q. Did he have on work clothes of the ordinary line-man?

A. No.

Mr. Hogan: She said he had on a striped suit.

A. Dress suit.

Q. Where is the C. C. Stoll residence with reference to the George Stoll residence?

A. Right next door.

Q. Was Mr. C. C. Stoll home at that time?

A. No, sir.

Q. In what business was Mr. C. C. Stoll engaged at that time?

A. In the Stoll Oil Company.

Q. In the Stoll Oil Company?

A. President of the Stoll Oil Company, the owner, I guess.

450 Mr. Inman: That's all.

Mr. Hogan: Now, if Your Honor please, the Government promised to connect up the identity with this man. Now they have not sufficiently done that.

The Court: She has testified twice it was Robinson.

Mr. Hogan: Your Honor please, she said the man was Thomas Robinson, Jr., but she has never identified that name with any person.

The Court: Can you identify the man that came to the door with anybody you see?

The Witness: With anybody?

The Court: Yes. You gave a name, but do you see anybody that was that man that came to the house?

The Witness: He is sitting right there.

The Court: Where?

The Witness: Right there.

The Court: You mean next to Mr. Hogan?

The Witness: Yes, sir, with the glasses on.

The Court: With glasses on.

Mr. Hogan: You mean this man over here?

The Court: No, right next to you.

Mr. Brown: I think the record should show she pointed

Testimony of Ella Schaaf

out Thomas Robinson, Jr.

Mr. Hogan: I don't want the Government to supply evidence.

The Court: I think it can be agreed upon by all
451. of us. If it can't, I will get the witness to go down
and place her hand on the shoulder of the man that
she has in mind. Do you mean the man sitting next to Mr.
Hogan there?

The Witness: That's right.

The Court: Who is the defendant in this case?

The Witness: Yes, sir.

Cross-examination by Mr. Hogan.

Q. Miss Schaaf, do you read, or are you able to read?

A. Yes, sir.

Q. Did you read this card that he presented to you
at the screen?

A. No, I couldn't see that far to read.

Q. What was the distance that you were from that
card?

A. Well, I would say from here to Mr. Inman.

The Court: About ten or twelve feet?

The Witness: Yes, sir.

The Court: Is that agreed on by counsel?

Mr. Hogan: That's about right, Your Honor.

Q. Well, now, if you couldn't read that card, how are
you able to tell this jury that it was a telephone identifica-
tion card?

A. Well, I just took his word.

452 Q. Then you didn't read on that card that any-
thing that had the words Southern Bell Telephone
Company.

A. No.

Q. To what part of the house did he go after you ad-
mitted him?

A. The middle part, where the telephone was.

Q. How many telephones were in that residence?

A. One up and one down—downstairs.

Q. Did he make any inquiry as to the whereabouts
of C. C. Stoll?

Testimony of Ella Schaaf

A. No.

Q. Did he mention his name?

A. I don't recall that.

Q. Did he ask you if Mr. Stoll was home?

A. No.

Q. Did he ask you where Mr. Stoll was?

A. No. No, sir.

Q. Did he ask you what Mr. Stoll's business was?

A. No, sir.

Q. Then he did not ask you anything pertaining to Mr. C. C. Stoll?

A. No, sir.

Q. Did he ask you anything pertaining to any member of the other Stoll families?

A. No, I don't recall it.

453 Q. He was just there from two to three minutes at the most?

A. That's what I judge.

Q. Did you go with him when he presumed to be inspecting the phones?

A. I was right with him.

Q. Was there anything unusual in his conduct?

A. No, not as I recall.

Q. Was he nervous or excited?

A. I don't know.

Q. Did he appear to be?

A. What is it?

Q. Did he appear to be nervous and excited?

A. Not as I noticed.

Q. Were you nervous or excited?

A. I was.

Q. Did you have any cause to be?

A. No, but I always was when anybody came to the door.

Q. You were nervous and suspicious, yet you admitted this stranger.

A. No, I wasn't suspicious at all.

Q. Well, you had some suspicion about his identity, did you not?

A. No, I didn't know anything about him.

Testimony of Ella Schaaf

454 Q. You didn't admit him on his first attempt to get in, isn't that true?

A. What is that?

Q. When he first came there, you didn't admit him just readily?

A. Well, I had orders not to let anybody in unless I knew them.

Q. I mean, you didn't do that. You made him stand there for a moment and identify himself.

A. Sure.

Q. So you did have some question in your mind as to his identity or right to be there, isn't that true? What is your answer?

A. I didn't quite get that.

Mr. Hogan: "Will you read the question?"

(Question read by the reporter, as follows:

"So you did have some question in your mind as to his identity or right to be there, isn't that true?"

A. Well, after he said he was a telephone man, I just took for granted he was one.

Q. After he left, did you dismiss that fact from your mind?

A. Yes.

Q. Did you tell anybody about it?

455 A. When the people came home they asked was anybody there to see them. I said, "Nobody but the telephone man."

Q. Did they take any further steps to find out who that was?

A. Mr. Stoll asked me, "Did he show you any badge or card that he was a telephone man?" And I said, "Yes, he showed a card, but I couldn't read it being I was in the house and this man was on the outside of the screen porch." He said, "Well, I think you did right not to let him in unless he showed you something."

Q. So you were satisfied and they were satisfied that he had a right to be there, is that correct?

A. I don't know.

Q. You must have been satisfied that he had a right to be there or you wouldn't have admitted him, is that

Testimony of Ella Schaaf

correct?

A. I don't quite get that, either.

Q. You must have been satisfied that he had a right to be there else you would not have let him in the house.

A. Yes, after he showed me this card.

Q. Well, he showed you some card that you were not able to read.

A. Yes.

456 Q. And you took a chance on that card being genuine.

A. Yes.

Mr. Hogan: That's all.

Mr. Inman: That's all.

The Court: You say he used the phone while he was there, Miss Schaaf?

The Witness: Yes.

The Court: Did he just examine the phone or did he use it?

The Witness: He took the receiver off and turned his back to me. I don't know did he have the clip down or whether he was talking. I couldn't say that, but he had the phone in his hand.

Q. (Mr. Hogan continuing) What was his conversation?

A. I can't say. I can't recall.

Q. To whom do you recall that he addressed his remarks?

A. Well, I don't know. I didn't hear that either.

Q. How far from him were you when he was using this phone?

A. I would say from here over to there.

Q. From your witness chair to the jury box?

A. Yes.

457 Q. Which is eight feet—is that about right?

The Court: Approximately so.

Mr. Inman: Yes, that's agreed, that's about right.

Q. How long did this conversation over the phone take place?

A. No time at all.

Q. You mean he didn't talk to anybody?

Testimony of Ella Schaaf

The Court: She said no time.

Q. Did he say many words or just have a brief conversation?

A. He didn't have no conversation. No, I couldn't understand a word he said. He talked in such a low tone that I couldn't get a word he said.

Q. He appeared to be talking to someone?

A. Yes, he acted like he was talking to someone. I don't know did he or not, but he had the phone in his hand.

Mr. Hogan: That's all.

Mr. Inman: That's all.

The Court: Members of the jury, we will take the mid-morning recess at this time. Move about and make yourselves comfortable, but do not discuss this matter among yourselves or with anyone or allow anyone to talk about it in your presence. Mr. Marshal, give us a ten minute recess.

458 A short recess was taken at this time after which the hearing was resumed as follows:

MRS. GEORGE STOLL was next called as a witness in behalf of the Government, and having been duly sworn was examined and testified as follows:

The Court: Just a minute before you begin, Mr. Brown, are there any witnesses in the court room? I want to keep reminding the Marshal at the door that no witnesses during the trial are to be allowed in the court room. Inquire of everyone who enters, whether or not they are a witness.

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Mrs. George Stoll.

Q. Where do you live, Mrs. Stoll?

A. 2539 Cherokee Parkway.

Q. Here in Louisville?

A. Louisville, Kentucky.

Q. How long have you lived at that address?

A. Twenty-eight years.

Testimony of Mrs. George Stoll

Q. Were you living there during the month of October, 1934?

A. We were.

Q. With your husband and family?

A. That's right.

459 Q. Were any other members of the household at that time besides your husband and your children?

A. My mother and father.

Q. They were both living there at the time?

A. Living with me.

Q. Do you recall the date of the kidnapping of Mrs. Alice Speed Stoll?

A. I do.

Q. A short time prior thereto, had anyone come to your home?

A. There was.

Q. Just describe the occurrence that happened there and with reference to the date, if you recall the date of the kidnapping, tell when it happened.

A. It was just a short time before the date of the kidnapping there was supposedly a telephone man who came to see the phone.

Q. Who left the man in, Mrs. Stoll?

A. My small daughter.

Q. How old was she at the time?

A. Nine years.

Q. Did you hear the door bell ring?

A. I did.

Q. Did you start for the door?

A. I did, but she ran ahead of me and opened the
A 460 door in a childlike way.

Q. Then what did this man do?

A. When I saw him Martha was going up the steps and I understood he was a telephone man and followed him.

Q. Where was your telephone located at that time?

A. On the second floor.

Q. Now, when you first saw this man, where was he in the house?

A. He was going up a few steps in the hallway.

Testimony of Mrs. George Stoll

Q. Did you immediately follow him?

A. I did.

Q. Where did the man go, Mrs. Stoll?

A. He went to the top of the steps and went into the first room right off of the hall where the telephone was.

Q. When he saw you, what questions did he ask you?

A. I cannot recall any questions that he asked.

Q. Do you know the man that came to your home as you have testified to about the telephone?

A. Do I know him?

Q. Yes, do you know who that man was?

A. I think I do, yes.

Q. Can you identify that man?

A. I can.

Q. If that person is in the court room, would you point him out and tell the jury who it is?

A. Yes, I could.

461 Q. Please do so.

A. Sitting to the right or to the side of Mr. Hogan.

Q. That's the man that came to your home?

A. Came to our home.

Q. Who else was in the house at that time?

A. My mother and the maid, and Martha Jean, my daughter, small daughter.

Q. What did he do at the telephone, Mrs. Stoll?

A. I could not say. It was a very short period, his back was toward me, but he went into the room a very short time.

Q. Where did you stand with reference to where he was in the room by the telephone?

A. I should say I was about two feet from him.

Q. Then what happened?

A. Then he left the house and I followed him, and as I reached the lower floor and he was going out the door I asked him what was the difficulty with the phone because we had made no report of any trouble with the phone.

Q. And what answer, if any, did you get?

A. He said that there had been a complaint, that there had been too many phones on this circuit.

Testimony of Mrs. George Stoll

Q. At that time did you have a party number, do you recall?

A. Yes.

Q. Is that the last time for a period of time that
462 you saw this man?

A. I have seen him since.

Q. When did you next see him after that occasion, in person?

A. October 13th of 1934.

Q. Of 1943?

A. 1943—beg your pardon.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Had this man who you say came there posing as a telephone man, ever been in your home before, so far as you know?

A. Before the time of the kidnapping?

Q. Before the time that he came to your home to look at the phone, as he told you?

A. He had not.

Q. You said he went, after being admitted, directly to the phone?

A. He was led by my little daughter to the phone and I followed him.

Q. Didn't you say on direct examination, Mrs. Stoll, that he went up there and into the room directly to the phone?

A. With my little daughter leading him.

Q. Was your little daughter in front of him or
463 behind him?

A. Yes, she was in front of him.

Q. How was this person dressed on the occasion that he went up to look at the phone in your home?

A. Very well groomed.

Q. Do you recall what type of clothes he had on?

A. I think he had on a striped suit, as I recall it.

Q. Do you recall what day of the month it was?

A. I am not—I can't tell you definitely, but it was just a short time before.

Testimony of Mrs. George Stoll

Q. By short time, do you mean a week?

A. It was within a week.

Q. With reference to October 10th, 1934, can you fix the approximate date that he was in your home?

A. It was within a few days.

Q. Did you have a conversation with him?

A. I can't recall of any conversation going up the stairs, but the one coming down and passing out of the hallway.

Q. What was that conversation?

A. Asking him what the difficulty was, that I had not reported any trouble on the telephone.

Q. Did that create any suspicion in your mind as to his authenticity?

A. It seemed strange to me.

464 Q. Did you watch him as he left your home?

A. I did.

Q. And for how long did you watch him?

A. Until he passed down the steps, out to the street.

Q. When he got to the street, did he walk or get into an automobile?

A. Got into an automobile.

Q. And what type of car was that?

A. I couldn't tell you. It was not a telephone operator's car.

Q. Just a privately owned automobile or private automobile?

A. It was a private automobile.

Q. Do you recall the color of that car?

A. I do not.

Q. Were there any outstanding features about the car that made an impression upon you?

A. No. It was too far away from the house.

Q. How far away from the house was the car parked?

A. Well, it was across the street—the parkway.

Q. Cherokee Parkway is that street in Louisville that intersects Cherokee Road, does it not?

A. Yes.

Q. There at the monument?

465 A. No, at the entrance to the park.

Testimony of Mrs. George Stoll

Q. Did you dismiss it from your mind or did the fact that this man had been in your home weigh on your mind?

A. I dismissed it to a certain extent, but thought that this man—I suspicioned something because he was not in the usual telephone uniform or whatever type of clothes a telephone man uses.

Q. And I suppose you likewise suspicioned it because he didn't have one of those little telephone type of cars that usually and customarily are used by telephone people.

A. His attire was what caused me to think there was something different in this case.

Q. Did you notify the authorities about this strange, suspicious man or this suspicious instance?

A. Not at that time.

Q. Did you at any time?

A. Yes.

Q. When?

A. Later.

Q. When?

A. I couldn't tell you that.

Q. How much later?

A. I couldn't tell you that. I don't recall. It has been so long ago.

466 Q. You have some idea as to the number of hours or days, do you not, Mrs. Stoll?

A. No, I couldn't answer that question.

Q. What was the occasion of your reporting it to the authorities?

A. For the fact that we had not had any complaint and for the fact that the same thing had occurred at the home of C. C. Stoll.

Q. Had you known that this same thing had occurred at the C. C. Stoll home?

A. I learned later, yes.

Q. Did you have that information or knowledge at the time you reported it to the authorities?

A. Yes.

Q. Now when did you learn from the C. C. Stoll family that a similar occurrence had taken place at their home?

Testimony of Mrs. George Stoll

A. I couldn't answer that. I don't recall.

Q. Was it before October 10th or after October 10th, 1934?

A. I couldn't tell you. I couldn't answer that question because I do not recall.

Q. Was it within a week.

Mr. Brown: She has answered it in several ways that she does not recall. I don't know that there could be any more complete answer.

467 The Court: Is the witness able to give any approximate idea?

The Witness: I am sorry, Your Honor, I could not.

Q. You did not report it the very day that this man was there?

A. I could not answer that question.

The Court: I think the witness has answered four or five times that she just doesn't remember when it was that she reported it.

Mr. Hogan: She did say that, Your Honor, but I—

The Court: She said it four or five times, hasn't she?

Mr. Brown: Yes, sir.

Mr. Hogan: That's all, Mrs. Stoll.

Re-direct Examination by Mr. Brown.

Q. A couple of questions I overlooked, Mrs. Stoll, with reference to the C. C. Stoll residence where is your residence located?

A. Right next door.

Q. On the day in question that you have testified about, what entrance did this supposed telephone repair man enter?

A. The Parkway entrance.

468 Q. Is that from Cherokee Parkway?

A. Cherokee Parkway entrance.

Q. Is that the usual entrance that your friends and invited guests enter?

A. They enter both entrances.

Q. With reference to the number that use the Cherokee Parkway entrance and the Longest Avenue entrance, which

Testimony of Mrs. George Stoll

is the customary entrance?

A. The Longest Avenue entrance.

Reeross-examination by Mr. Hogan.

Q. Mrs. Stoll, you determined at that time that the car that the gentleman was using was most likely not a telephone car.

A. Yes.

Q. Did you attempt to get the license number from that car?

A. No. As I say, I was too far away from it.

Q. Were you able to see the color of the license, whether or not it was a Kentucky license or foreign state license?

A. I could not.

Mr. Hogan: That's all.

Mr. Brown: That's all.

469 H. C. KOTTKE was next called as a witness in behalf of the Government, and having been duly sworn was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. H. C. Kottke.

Q. Mr. Kottke, were you living in Louisville during the year 1934?

A. Yes, sir.

Q. What business were you in?

A. In the automobile sales and service.

Q. Where was your place of business located in 1934?

A. 1114 Bardstown Road.

Q. Are you still in the automobile business?

A. No, sir; I am in defense work now.

Q. I will draw your attention to the month of October, 1934, and ask you if anyone came to your place of business seeking directions to Lime Kiln Lane.

A. Yes, a well dressed young man came in there.

Testimony of H. C. Kottke

Q. What day was that, Mr. Kottke?

A. Well, it was on the 10th of October.

Q. About what time of the afternoon or morning?

A. Just about 2:00 o'clock.

470 Q. Suppose you tell the jury—2:00 o'clock in the afternoon?

A. Yes, sir.

Q. Tell the jury what happened that afternoon.

A. Well, this young man came in the office, or he was there when I came in, I had been to bank, and I drove in the driveway and put my car in the garage and come into the office and he was there then.

Q. What did he ask you, Mr. Kottke?

A. He asked me, he said, "Can you direct me to Lime Kiln Lane? I have stopped at a gas station, but they couldn't tell me."

Q. What answer did you make to that, Mr. Kottke?

A. I was somewhat confused about the Lime Kiln Lane, and we also have here in Louisville a Tile Factory Lane, and I couldn't get it in my mind which was which, so I took the City Directory and looked in the back, thinking it might give me a clue, you know, in the back of the directory, where Lime Kiln Lane was, but, of course, it is out in the county and it didn't give it. So then I took the telephone directory, the criss-cross directory and that usually goes a little bit further out in the county, and I tried to find Lime Kiln Lane listed there, but I couldn't find that. So I asked him, when I couldn't find out, I asked him, "If you will tell me who you want to see, I'll

471 be able to tell you just about where he lives because I am pretty well known here in this town here." So he said, "Yes, Berry V. Stoll," and he mentioned that name very plainly, Berry V. Stoll. I said, "Oh, the oil man!" He said, "Do you know him?" I said, "Well, I don't know him, but I do know his brother George very well," and I said, "Well, now, he wouldn't live on Tile Factory Lane because that is a very poor section of the county and it is mostly negroes and very poor people live there," and then it dawned on me Lime Kiln Lane is up towards Harrods Creek. And during the conversation he brought out the fact

Testimony of H. C. Kottke

that he had been there some months ago but he lost the direction of it.

Q. What with reference to the telephone conversation—did you offer to telephone?

A. Yes. To make sure, I offered, I said, "Suppose I call up," and I looked in the telephone book, and of course saw "Berry V. Stoll" under the Harrods Creek, I am pretty sure I looked under the Harrods Creek listing. I said, "Let me call and make sure how to get out there." And he said, "Oh, no, no, don't do that."

Q. Now did you offer to call anyone else?

A. Then I said, "I'll tell you what I do. I know Mr. Bader out at Harrods Creek too, he runs a grocery store out there, I know him very well. Suppose I call him." He said that would be all right. So I called Mr. Bader
472 and the line was busy on one or two occasions. I think I had to make two or three attempts to get Mr. Bader, but I finally got Mr. Bader and he told me just exactly where Lime Kiln Lane was. Of course, later on it come to me.

Q. Did you give this man directions how to get to Lime Kiln Lane?

A. Yes. I told him, "Now there are two ways you can go there. You can go the River Road or you can go the Brownsboro Road." He said, "No, I don't want to go the River Road." Of course, I didn't ask him why, but he said he didn't want to go the River Road.

Q. Did you give him the directions?

A. So I told him that the Brownsboro Road is a little bit easier for me to direct him, a little bit easier for a stranger to find, but that's the way he wanted to go, so, of course, that's the way I directed him.

Q. How long was he in your place of business altogether, Mr. Kottke?

A. Oh, I should judge between ten and fifteen minutes.

Q. Did you have occasion to observe that man closely?

A. Yes, pretty closely, because he didn't seem to be in no hurry, just stood there and was willing to talk.

Q. A short time later on that afternoon or night,
473 did you have occasion to hear of the report of the

Testimony of H. C. Kottke

kidnapping of Mrs. Alice Stoll?

A. Yes, I heard it over the radio. We had a radio at the office.

Q. Then sometime thereafter, did you have occasion to see a picture of certain suspects in the kidnapping?

A. Not for several days after.

Q. That's what I say.

A. No, not for several days.

Q. Several days thereafter, did you happen to see the picture of suspects?

A. Yes, but before that—

Q. You had reported this, had you not?

A. The newspaper men were there and I gave them a very good description of the man and they drew a picture of it.

Q. From the description you furnished?

A. From the description I gave them.

Q. Can you now identify the man that came to your garage at 2:00 P. M. on October 10th, 1934?

A. I am sure I can.

Q. Would you look around here in the court room and see if that man is here?

A. That's the man right there. Of course, he didn't wear glasses then.

474 Q. Sitting next to—

A. Sitting between the two gentlemen right there at that table.

Q. And he was in your place of business approximately fifteen minutes?

A. Yes.

Q. Now, after you had given him the directions to get to Lime Kiln Lane by Brownsboro Road, how did he leave your place of business?

A. He went out the front door, but that's as much as I could say because just at that time one of my mechanics brought a customer in and he had a complaint, and he was rather boisterous about it, and while I was trying to quiet him this gentleman walked out, and I didn't see which direction he went.

Q. You don't know how he left your place of business.

Testimony of H. C. Kottke

A. I don't know how he left; no, sir.

Q. Mr. Kottke, do you know where, in 1934, Mr. C. C. Stoll and Mr. George Stoll lived?

A. Yes.

Q. How close was your garage to the C. C. Stoll and the George Stoll residence?

A. Just about six or seven blocks, it all depends on how you want to go. You can go by the way of Cherokee Road or you can go by way of Longest Avenue. 475 Of course, going by Longest Avenue, that's closer to it.

Q. Would it be a fair description to say both your place of business and the George Stoll residence and the C. C. Stoll residence are in the Highlands?

A. Yes.

Mr. Brown: I think you may ask the witness.

Cross-examination by Mr. Hogan.

Q. Did I understand you to say a moment ago, Mr. Kottke, that you did not yourself know where Lime Kiln Road was?

A. I was somewhat confused just for a moment.

Q. And you were required to call Mr. Bader at Harrods Creek to find out where that was?

A. No. I knew then where it was, but to make absolutely sure I called Mr. Bader.

Q. But when this man came into your place and asked you for directions to Lime Kiln Road, you then were hazy as to its location?

A. Just for a moment, yes, as you would be, someone ask you a question and just for a moment maybe you have got other things on your mind, you just can't think for a moment.

476 Q. That doubt as to its location really existed in your mind for more than just a moment, did it not?

A. No. Well, all right, say more than a moment.

Q. About how long?

A. Now, I didn't have no watch and time myself.

Q. No, just give me some idea?

A. Just like I say, just a second or two, until your

Testimony of H. C. Kottke

thoughts begin to gather.

Q. Would you have been able without having called Mr. Bader to have taken this man to Lime Kiln Road without asking anybody how to get there?

A. Yes, because before I called Mr. Bader it was thoroughly fixed in my mind where Lime Kiln Road is. Of course, I have been out there many a time.

Q. This man you say was a well dressed young man?

A. Yes. He had on a dark suit, I am almost sure it was dark blue.

Q. Didn't you say a moment ago on direct examination you didn't know where Lime Kiln Road was?

A. At the moment I didn't know, but I had been there many times. As I say, I was just a little bit confused just for a moment.

Q. I believe you likewise stated you volunteered to take this man to the party he wanted to see on Lime Kiln Lane?

A. No, I made no statement of that sort. I offered to call up and get the direction. I didn't volunteer to take him because I had a business to take care of.

Q. I believe your statement was that you offered to direct him.

A. Yes, and I did direct him.

Q. How were you going to be able to direct him if you at the moment didn't know where Lime Kiln Road was?

A. Well, I was courteous enough to go—to avail myself of the information to try to find out.

Q. Did you know anybody who resided on Lime Kiln Road?

A. No.

Q. How were you going to direct him to somebody on Lime Kiln Road if you didn't know anybody who resided on that road?

A. Well, you don't have to know a person's name that lives on the road to direct them to a certain place. If a man wants to go some place on Broadway, I certainly don't have to know who lives on Broadway in order to tell him how to get to Broadway or how to get to the Tenth Street

Testimony of H. C. Kottke

Station.

Q. All right, sir, but if a person inquires about going to see a person on Broadway, you would have to know whether he lived at Forty-fifth and Broadway or 150 East Broadway before you could start him out on that direction, wouldn't you?

478 A. That's hardly a fair comparison because Lime Kiln Lane, after all, is only about, Oh, at the most, two miles long.

Q. And yet you were going to offer to direct this man or some man to some place on a road two miles long, and yet you did not know anybody who lived on that road.

A. I still think that's a very foolish question.

Q. Well, foolish or unfoolish, was that your situation?

A. Because I can draw you a diagram where the road is.

Q. Was that your situation? Is that what you were trying to do out of courtesy?

A. I did direct him and he got there, so I evidently knew what I was doing.

Q. You knew what you were doing after you called the store man, Mr. Bader, at Harrods Creek.

A. I knew before that, but I wanted to verify it. I wanted to be absolutely sure. I certainly didn't want to send a stranger eight or nine miles out in the country without being sure that is the place.

Q. Well, now, was he a stranger. You said that he didn't want to go by way of River Road.

A. He made the remark that he had been there some months ago.

479 Q. Been where?

A. In Louisville, and he had been out on the Lime Kiln Lane.

Q. Did he tell you that?

A. He told me that; yes, sir.

Q. Are you sure he told you that?

A. I am positive.

Q. There is no question in your mind about that?

A. None whatever.

Q. And you are sure that he told you he didn't want

Testimony of H. C. Kottke

to go to Lime Kiln Road by way of the River Road.

A. I am sure of that; yes, sir. I wanted to send him that way because that would be the easiest way to direct the man to Lime Kiln Lane from my place of business.

Q. Did he give you any reason why he didn't want to go by way of the River Road?

A. No. Of course, as I say, I wouldn't pry into a man's affairs.

Mr. Hogan: That's all, Mr. Kottke.

Mr. Brown: That's all.

Mr. Brown: Call Mrs. Alice Stoll.

The Court: Mrs. Stoll, you were sworn yesterday?

Mrs. Stoll: No, I was not.

(Mrs. Stoll was thereupon duly sworn by the Clerk.)

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MRS. ALICE SPEED STOLL called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Mrs. Alice Speed Stoll.

Q. You still live on Lime Kiln Road, Mrs. Stoll?

A. I do.

Q. During the month of October, 1934, did you live on Lime Kiln Road?

A. I did.

Q. What is the name of your husband?

A. Berry V. Stoll.

Q. I will direct your attention to the events that happened on October 10th, 1934. I will ask you if you were at your home that day.

A. I was.

Q. Was there any unusual reason that day why you were at home?

A. Yes. I was ill with a bad cold and I was resting at home.

Q. Approximately sometime in the afternoon, did some

Testimony of Mrs. Alice Speed Stoll

person come to your home?

A. Yes. A man came saying he had come to
481 repair the telephone.

Q. About what time of the afternoon, as best you can judge. I don't expect you to be absolutely accurate.

A. About 3:00 o'clock in the afternoon.

Q. At that time, how many people were in your home?

A. Myself and the maid, Anne Woollet.

Q. Is that W-o-o-l-e-t? Is that the way to spell it?

A. W-o-o-l-e-t, I think.

Q. At what part of your home were you in when this man came to your house?

A. I was resting in my bed room.

Q. Did you have occasion to overhear any conversation between this man and your maid, Mrs. Woollet?

A. Yes. I heard him say to her in the hall downstairs that he had come to repair the telephone.

Q. Prior to that time had you had any trouble with your telephone?

A. Yes. We had had trouble with our telephone for over a month and the telephone man had been working on the line, several telephone men had in fact.

Q. Had that same morning a telephone man been to your home?

A. Yes, he had.

Q. When this man got admittance to your house,
482 Mrs. Stoll, can you tell what next happened? At that time were you in your bed room?

A. I was.

Q. Now what happened with reference to this man or your maid coming upstairs to talk to you?

A. The maid came up to my bed room where I was resting and asked if the telephone man might work on the extension line that was in my room.

Q. What did you do then, Mrs. Stoll?

A. I moved to the guest room and closed the door and told her that he might.

Q. How were you dressed on that occasion?

A. I was fully dressed except that I had on a kimono

Testimony of Mrs. Alice Speed Stoll

instead of my dress.

Q. Are you able to identify the man that came to your home on October 10th, 1934?

A. Yes, I am.

Q. Would you point out to the jury that man that came to your house?

A. Sitting right there.

Q. Now, Mrs. Stoll, after you had moved to the bed room or to the guest room, how long did you remain in the guest room before anyone, either Mrs. Woollet or this defendant, came in your room?

A. Say a half hour or more.

Mr. Hogan: Would you mind reading that question and answer?

483 (Question and answer read by the reporter, as follows:)

“Q. Now, Mrs. Stoll, after you had moved to the bed room or to the guest room, how long did you remain in the guest room before anyone, either Mrs. Woollet or this defendant, came in your room?”

A. Say a half hour or more.”

Q. I meant the guest room.

A. Well, I couldn't say exactly; perhaps between fifteen minutes and a half hour. I couldn't say exactly.

Q. What happened then, Mrs. Stoll?

A. The door opened and the maid came into the room ahead of the kidnapper, he holding a gun at her back.

Q. And what was your first word at that time, Mrs. Stoll?

A. “What are you doing in here?”

Q. And to which question did he reply anything?

A. He said that he had come to kidnap me.

Q. What did you do then? Did you attempt to reason with him about that?

A. I did. I thought of every argument that I could think of to try to talk him out of it. I told him we were not wealthy. I told him my father had had recent
484 bank losses. I talked and argued in every way I could think of to dissuade him from taking me.

Q. You were not able to dissuade him?

Testimony of Mrs. Alice Speed Stoll

A. No, I was not.

Q. And with reference to what happened then, at any time were your hands bound or attempted to be bound?

Mr. Hogan: If Your Honor please, Mr. Brown is leading the witness.

Mr. Brown: I suggest that is leading. I can rephrase it. I was trying to hurry along, maybe.

Q. What happened next, Mrs. Stoll, when you were unable to dissuade him?

A. My arguments were of no use. He laid his gun on the bed for a second. He intended to tie my hands at that point, and while the gun was on the bed for that second I attempted to grab it.

Q. What happened when you attempted to grab his gun?

A. He hit me on the head with an iron pipe that he had brought.

Q. I'll show you this pipe wrapped in paper, and ask you if it was that pipe or a similar pipe with which you were struck by this defendant.

A. It was.

Q. At what portion of your head were you struck?

485 A. On my right forehead.

Q. What happened then, Mrs. Stoll?

A. I continued to try to resist and I asked the maid in a low tone of voice if she would try to get my gun, our own gun, which we kept in our bed room.

Q. Did at that time your husband have a gun there at your house?

A. Yes.

Q. Where was that gun kept at that time?

A. In our bed room.

Q. After you had asked the maid to attempt to get that gun and you continued to resist, what then happened?

A. She did not make a move to get it, so I attempted myself to get into my bedroom to get the gun, at which point he hit me over the head again, so hard that time, that I fell over on the bed, the blood rushing from my head.

Q. What portion of your head did he strike at that time—whereabouts?

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A. Right over my right ear, on the side of my head.

Q. After receiving that blow, what was your condition?

A. I was in a dazed condition, the blood flowing heavily from my head, hardly conscious.

486 Q. Now then what happened next, Mrs. Stoll?

A. He ordered the maid to bind my wrists while he held the gun in front of us both.

Q. With what were your wrists bound?

A. With wire.

Q. After your wrists were bound, did you have any conversation of any kind with this defendant relative to the arrival of your husband?

A. I did not mention the arrival of my husband, but he said "When will Berry be home?"

Q. Did he use the phrase "When will Berry be home?"

A. Yes.

Q. What answer did you make to that?

A. I did not answer him. I was so nervous at that point I was not going to tell him when Berry would be home.

Q. Did he make any statements with reference to the arrival of your husband, Berry?

A. He did. He said, "If he arrives home now I will kill him."

Q. Now after your wrists were bound, and after the statements you have just testified to were made, with reference to Mrs. Woolet, what happened to her? What was going on at that time with reference to her, if you
487 have any recollection about that?

A. He bound her also.

Q. Now up to that point, were you dressed in the same way that you have heretofore testified about?

A. I was.

Q. Were you ordered anywhere?

A. I was ordered to walk out the front door and into his car.

Q. Were you allowed to procure any other wearing apparel at that time?

A. I was allowed to get my coat after I asked him if

Testimony of Mrs. Alice Speed Stoll

I might get it.

Q. And you were then taken to the car?

A. Yes, sir.

Mr. Hogan: Now that is objected to. He is leading the witness.

The Court: Of course, it is leading; the question may be reframed.

Q. After your coat had been obtained, Mrs. Stoll, where next were you ordered or did you go?

A. I was ordered to proceed to his car. He walked behind me with the gun.

Q. That was from your home on Lime Kiln Road in Jefferson County, Kentucky?

A. Yes, sir.

488 Q. Up to that time, other than your wrists being bound, had anything else happened to you?

A. Yes. Before I left the guest room he put adhesive tape over my mouth so it would be impossible for me to open it.

Q. After you got out to the car, were you able to describe the car or what type of car it was?

A. It was a Ford.

Q. What color, if you recall?

A. Black or dark blue.

Q. Any other distinguishing features about it that you recall at this time?

A. I made an attempt to remember the license number.

Q. Did you remember the license number?

A. Yes.

Q. Have you forgotten it by this time?

A. Yes, sir.

Mr. Hogan: That is leading.

The Court: It is leading—

Mr. Brown (Interrupting): It is leading but since she has forgotten it, it will not hurt you.

The Court: I don't think that is prejudicial at all.

Q. All right. After you got to the car what
489 happened then?

A. I was ordered to lie down on the floor of the car in front of the back seat. My feet at that point were

Testimony of Mrs. Alice Speed Stoll

bound and I was covered all over with blankets and newspapers—entirely.

Q. Did the car start at that point?

A. It did.

Q. Can you tell the jury in what direction it went after leaving your residence?

A. Yes. I was trying to keep my mind on all points thinking he may be caught; and I made a mental note. The car turned left.

Q. Beyond that, are you able to tell in which direction the car turned?

A. No.

Q. Now I will show you this map which I don't think perhaps you have seen before. This map is Government Exhibit No. 1—

Mr. Hogan (Interrupting): Now, if Your Honor please, I do not recall yesterday that the government introduced that map in evidence.

Mr. Brown: I thought it was not only introduced in evidence, but designated as Government Exhibit No. 1.

Mr. Hogan: It might have been designated as Government Exhibit No. 1 but I do not recall that it was
490 introduced.

Mr. Inman: Mr. Wehmoff identified that map and it was introduced as Government Exhibit No. 1 with his testimony.

The Court: I know that it was identified as Government Exhibit No. 1. Was it at that time introduced?

Mr. Inman: Yes, Your Honor. I asked him if he would introduce it with his testimony as Government Exhibit No. 1, and he said "I will."

The Court: Well can't you look back and see if there is going to be any question about it?

Mr. Hogan: Well the point is if they are going to use it I want it introduced.

The Court: Well can't it be by agreement introduced now if it wasn't introduced before?

Mr. Hogan: Yes, that is all right. The point is I did not want it referred to as being in evidence if it was not really in evidence.

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The Court: All right.

Q. Now this is your residence right here, and this is the driveway to Lime Kiln Road, this road here being Lime Kila Road. Now, after you left your entrance here, was it at that point that the left turn was made?

A. Yes.

491 Q. And leading left, it would follow Lime Kiln Road along that way? Is that the way Lime Kiln Road runs?

A. Yes.

Q. What road does it eventually reach out here?

A. The Brownsboro Road.

Q. Now after that car had turned left and started out, Mrs. Stoll, how long was it driven before there was any stop of any kind, if you can recall?

A. I cannot recall exactly—perhaps a half an hour or so.

Q. Was a stop made at some point then?

A. Yes.

Q. Was there any conversation or, if there was, could you overhear any conversation?

A. Yes, the car stopped and backed up, and he said "Okay", to someone, and then he started singing and went on.

Q. Now how far did you drive before there was another stop? I don't expect you to tell the distance, but estimate the time, if you can, from the time you left your home on Lime Kiln Lane until you finally came to a rest?

A. Two hours or more.

Q. When this stop at the end of that two hours ride was reached, could you tell the jury where you were, 492 or where you discovered yourself to be at that time?

A. He said, "We are now in Indianapolis."

Q. Now at what part of Indianapolis did you find yourself to be in? Where in Indianapolis?

A. We stopped at a dark garage.

Q. And did he make any statement to you? Did he stay in the car or leave the car?

A. He locked me in the car and said that he was going to see if the coast was clear and that if I made any attempt

Testimony of Mrs. Alice Speed Stoll

to scream or attract attention he would bump me off.

Q. Did he use those words?

A. Yes.

Q. How long was he gone at that time?

A. 5 minutes or so.

Q. And what happened? You remained, of course, bound and gagged and locked in the car?

A. Yes.

Q. What happened then?

A. He returned and said the coast was not clear and that he would drive out into the suburbs.

Q. Up to this point where were you? In what portion of the car?

A. On the floor; the same place I had been since I left home.

Q. How many seats in the car?

493 A. Front seat and back seat.

Q. With reference to the front seat and the back seat, where were you located?

A. On the floor in the front of the back seat.

Q. Now then, directing your attention back to when you say he returned and said the coast was not clear and that he would drive out in the suburbs, what happened then?

A. When we got to a deserted part of the town he stopped the car and unbound my feet so I could sit up and ordered me to sit on the front seat.

Q. With reference to the condition of your mouth up to that point, what was the condition of your mouth?

A. The adhesive tape had not been taken off up to that time.

Q. Now then what happened to the adhesive tape out there?

A. He took it off.

Q. Now, with reference to your hands, what was the condition of your hands and wrists at that time?

A. They were still bound.

Q. With reference to the condition of your head, what was the condition of your head?

Testimony of Mrs. Alice Speed Stoll

A. It was still bleeding.

Q. Up to that time had it received any attention
494 of any kind?

A. No.

Q. Now after you received your order to sit in the front seat of the car, what then happened?

A. I asked him if he would unbind my wrists. I was suffering a great deal from the pain.

Q. Did he at that time unbind your wrists?

A. Yes.

Q. Did he, or did he not, make any statements to you at that time with reference to attempting to escape?

A. Well, he said if I made any attempt to attract attention he would bump me off.

Q. He again used that phrase, "bump you off"?

A. Yes.

Q. Now, then, Mrs. Stoll, at that time or shortly thereafter did you have any conversation with this defendant?

A. Yes. As soon as my mouth was unbound I asked him why he had kidnapped me.

Q. And what did he tell you?

A. He said for the money.

Q. Now then after you had ridden out there to this deserted part of Indianapolis, and after you were unbound, as you have described, and after this statement he made that you have testified to, where next did you go in
495 the car?

A. We drove out to the apartment.

Q. And where did you go then?

A. We drove back to the garage where we had been before.

Q. What happened at that point?

A. He asked me if I would walk in or would he have to carry me and I said that I would walk in.

Q. All right. Now how did you get into the place that you subsequently went?

A. We came in through the back door.

Q. What was the condition of the alley, or the place where the garage was, with reference to being dark or

Testimony of Mrs. Alice Speed Stoll

light?

A. It was terribly dark.

Q. What portion of the apartment did you enter into?

A. The kitchen.

Q. What was the condition of the kitchen when you got in there?

A. It was in great disorder, with dirty dishes.

Q. Had you had any food up to that time?

A. No.

Q. With reference to any food that you might have had, tell the jury if you had any conversation with the defendant about food?

496 A. Yes, he said that he wanted to have some supper.

Q. Were you able to fix any?

A. I scrambled some eggs.

Q. Were you able to eat anything?

A. A little bit.

Q. Then what was your condition?

A. I was feeling pretty sick and had to lie down.

Q. Where did you lie down?

A. On the bed.

Q. In the bed room of this place?

A. I think so.

Q. How many beds were in that room?

A. Twin beds.

Q. Now with reference to how you were secured in that bed, will you tell the jury how you were secured in that bed?

Mr. Hogan: Now wait a minute—that is entirely leading. She has not said that she was secured in the bed.

Mr. Brown: Well I will rephrase the question. I agree with you that it was leading.

Q. How did you spend that night?

A. With my hands bound.

Q. How were they bound?

497 A. To the springs of the bed on each side.

Q. Were you able to shift your position at all?

A. No, I could not move.

Q. Now was this in one of the twin beds?

Testimony of Mrs. Alice Speed Stoll

A. Yes.

Q. Where did the defendant Robinson spend the night?

A. In the other twin bed. I asked him if I might spend the night on the couch in the living room, and he said no.

Q. In addition to your hands being tied to the springs, were you attached in any other way to the defendant?

A. One of my wrists had a cord tied around it, which was attached over to his so in case I made a move he would know it.

Q. Will you answer the question again?

A. I say, a cord was attached to my wrist which also reached over to his, so when I made a move he would know it.

Q. How long did you remain tied to the bed in that manner? All that night?

A. Yes.

Q. Now then up to that time what was your physical condition?

A. I was in a very weakened condition. My head 498 was going around so I could not rest from the first blow on my head, and from the second blow on my head I was still bleeding, and I was feeling very weak and very ill.

Q. Up to that time was your head given any attention and, if so, what was done.

A. Yes. The first night I asked him if he would put some mercurochrome on it and he did.

Q. Was any other attention given to it other than that requested mercurochrome?

A. No.

Mr. Brown: Your Honor, I am going to leave this phase of the case. If you wouldn't mind adjourning for lunch I will get out some exhibits I want to use now.

The Court: All right. Members of the jury, we will adjourn at this time and reconvene at quarter to two. During this recess do not discuss the matter among yourselves or with anyone or permit anyone to talk about it in your presence.

At this point the noon recess was taken, after which the following proceedings were had:

Testimony of Mrs. Alice Speed Stoll

Direct Examination by Mr. Brown continued.

Q. Now, Mrs. Stoll, after your arrival in Indianapolis at that place and after the first night, did
499 this defendant during the next several days have occasion at any time to leave the apartment?

A. Yes, he did every day.

Q. When he left the apartment what was done with you?

A. I was locked in a small closet off of the living room. I was first tied in a chair that was placed in there, and the closet door was closed when he left the apartment, and I was locked there with my mouth gagged and an adhesive tape over my lips.

Q. And with reference to the position of that closet in that apartment, can you orient the jury somewhat and tell them—we have had the apartment layout explained to us, consisting of the kitchen, bed room, and the living room. Now where did this closet open from? Which one of those rooms?

A. From the living room.

Q. Now with reference to the location of the bath room opening out of the living room, facing the bath room, where was that closet?

A. To the left of the bath room.

Q. Was it a large closet or a small closet?

A. No; a very small closet.

Q. Now I will show you government exhibits 15 and 16, government Exhibit 15 being with the chair side-
500 ways in the closet, and government Exhibit No. 16 showing the chair facing the front of the closet, and ask you to examine those two pictures and tell the jury, after you were tied, bound and gagged and placed in the closet, which way the chair faced?

Mr. Hogan: I object to that because the drawing shows more than one closet.

The Court: The picture shows more than one closet?

Mr. Hogan: No; the drawing shows more than one closet.

The Court: She is looking at the pictures now.

Testimony of Mrs. Alice Speed Stoll

Mr. Hogan: She has never stated which of the closets she was put in.

The Court: She said that she was put in the one next to the bath room. She said she was in the one to the left of the bath room. Is there more than one to the left of the bath room?

Mr. Hogan: No.

Mr. Brown: That is what she said.

Q. Was it the closet immediately to the left of the bath room?

A. Yes.

The Court: I think she said it was off of the living room.

501 Q. You were tied to the chair, bound and gagged and placed in a closet in a chair that faced this position (indicating)?

A. Yes.

The Court: Which position was that?

Mr. Brown: I thought I showed that picture to the jury.

Q. That is facing the door, isn't it?

A. Yes.

Mr. Hogan: Which exhibit is that?

Mr. Brown: No. 16.

Q. Now, Mrs. Stoll, in that closet were there any windows or any other opening with the exception of the door?

A. No.

Q. Now on how many different occasions—either by days or any other way you want to put it, would you be tied in the position you have indicated and left in that closet?

A. Usually several times a day.

Q. What was the occasion of your being tied and left in the closet in that way?

A. Whenever he left the apartment or whenever he went from the room where I was—I was never left in the room by myself.

502 Q. Now, Mrs. Stoll, with reference to any conversation that you may have had with this defendant,

Testimony of Mrs. Alice Speed Stoll

if you did have any conversation with him, would you relate the topics that were talked about as specifically as you can?

A. I saw the Indianapolis newspapers. We discussed the kidnapping, what he saw in the newspapers, what he would tell me from conversations that he had had with his family—that is about all.

Q. With reference to that—the conversations that he had and that he related to you that he had. Was there any discussion concerning the payment of any money?

A. Yes. He would become very angry when he said that his family's house was being watched by the police.

Q. Now did you at any time suggest that he communicate with anyone by telephone?

A. I did. I repeatedly requested that he call my family on the telephone.

Q. What did he say with reference to that?

A. He refused to do so because he said that the phones were being watched.

Q. Did you suggest anyone that he communicate with?

A. I finally suggested a very close friend of mine, Miss McHenry.

Q. Miss McHenry is now Mrs. Douglas Potter?

503

A. Yes.

Q. Did you discuss with him any means of identification?

A. Yes, I had on at that time a pair of brown alligator shoes, and this friend of mine had a pair exactly like that, and I knew that would identify me. Also, I had a sapphire ring on that she knew very well was mine.

Q. Did you suggest that this defendant communicate with Miss McHenry?

A. I did.

Q. With reference to Miss McHenry's residence or phone number, did you tell the defendant anything about that?

A. Yes; I gave him her telephone number.

Q. Now some time after this conversation, did you have any further conversation with this defendant about whether he had communicated with Miss McHenry or not?

A. Yes; he came back and said he had.

Testimony of Mrs. Alice Speed Stoll

Q. Now, Mrs. Stoll, will you tell the jury how this letter happened to be written, and whether it is in your handwriting or not?

A. It is.

Q. How did that letter happen to be written?

A. He dictated the letter to me and told me to write it to confirm the telephone call that he had made to my friend.

504 Q. Did you then deliver this letter in this envelope to this defendant?

A. Yes.

Q. I will show you this letter with the envelope, and ask you if that is the letter that you wrote in response to this defendant's dictation?

A. It is.

Mr. Brown: I would like to read this letter to the jury.

"Sunday, October 14th.

"Dear Seat--

Q. Tell the jury about the salutation in the letter?

A. Well this friend of mine and I had called each other by that name. We had grown up together in school, and it was a sort of a nickname we had for each other, and I knew if I addressed it that way she would know it was from me.

Mr. Brown (Continuing):

"Dear Seat--

505 "The phone call was okay. I asked the kidnapper to get someone to call you. He said he drove to Indianapolis to do so. He and I believe that Berry delivered the money to Mr. T. H. Robinson in good faith. However, the kidnapper knows that the police are watching the intermediary. The kidnapper now wants the intermediary to deliver the money to Mrs. Frances Robinson, his daughter-in-law. She will or already has received instructions.

"This is the only person from whom and the only way by which the kidnapper will agree to accept the money. This is final.

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"Do not attempt to call the person who called you, or trace it in any way. The person who called is a friend of the kidnapper and will receive the money. Therefore, instruct all the family to be sure the daughter-in-law is not followed or interfered with in any way.

"If these instructions are followed, I will be released unharmed within 24 hours. Otherwise, I am sure they will carry out their threat.

"Get my family to use all their influence to withdraw the law from the case until I return. This is imperative."

Mr. Brown: I would like to introduce this letter in evidence as Government Exhibit No. 30.

The Court: All right.

506 Mr. Brown: That is the letter, the envelope, and the stamps.

(The letter above quoted was handed to the Reporter, marked Government Exhibit No. 30, and filed with the record.)

Q. The envelope is postmarked "Indianapolis, Indiana, October 14, 4:00 P. M., Special Delivery. Miss Elizabeth McHenry, 1414 South Third Street, Louisville, Kentucky."

A. Yes that is right.

Q. Now, Mrs. Stoll, during the time you were held in that apartment, did you at any time ascertain the true identity of the kidnapper?

A. Yes. On the second day afterwards he had a telephone conversation with his father and he came back and told me that it was known who he was; that my family then knew, and so he told me his name at that time.

Q. Up to the time on October 10, 1934, up until approximately the hour of 3:30 P. M., in the afternoon, had at any time you seen this man by the name of Robinson or any other name at any time before?

A. No; I had not.

Q. Now during your stay in that apartment did this defendant Robinson molest or attempt to molest you in

Testimony of Mrs. Alice Speed Stoll

any way?

A. No; he did not.

Q. Did you have any conversation with him on 507 that subject?

A. I said if he made any attempt to that my husband would never stop until he had tracked him down and killed him.

Q. Now, Mrs. Stoll, I will show you a letter and ask you if you wrote that letter?

A. Yes; I did.

Q. Will you tell the jury under what circumstances this letter was written, dated Saturday October 13th addressed "Dear Mr. Intermediary"?

A. He had told me after a conversation with his father that his wife would bring the money to the apartment, the ransom money, and when it did not arrive the next day, he had me write this letter.

Q. Did this letter enclose anything?

A. Yes, it enclosed my wedding ring to show that I was still alive.

Q. What was this defendant's state of mind, as manifested by his actions, when the ransom money did not arrive?

A. He was very angry.

Q. All right.

Mr. Brown: I would like to read this letter to the jury.

The Court: All right.

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"Saturday, October 13th.

"Dear Mr. Intermediary:

"This is Alice Stoll writing. We are sending my wedding ring on which is engraved my name if you look inside closely. I am well and being treated nicely. I have only a slight cut on my head.

"If you have not already done so, please pay over the money to the one who this man tells you to.

"Alice Stoll.

"P. S. The man I am referring to is the man who is sending this letter to you with instructions.

Testimony of Mrs. Alice Speed Stoll

Of course you may have already paid it, in which event ignore this letter."

Mr. Brown: I would like to introduce that letter as Government Exhibit No. 31.

(At this point the above quoted letter is handed to the Reporter, marked Government Exhibit No. 31, and filed with the record.)

Q. Now, Mrs. Stoll, up to the time you finally left that apartment, had you ever in the daytime seen the outside of the place where you were being held?

A. No; I had not.

Q. With reference to the apartment itself, with reference to the shades or any coverings on the windows, tell the jury during your stay there what the condition of that apartment was?

A. The blinds were drawn.

Q. Were you at any time ever able to see outside of the apartment?

A. No.

Q. Now I will show you another letter addressed "Dear Berry," and ask you to examine the envelope and the letter itself and tell us whether or not you wrote that letter.

A. Yes; I did.

Q. Will you tell us under what condition this letter was written?

A. To try to get him to call off the police.

Q. I notice it is addressed to Mr. Berry Stoll, in care of Mr. W. S. Speed, 2828 Lexington Road, Louisville, Kentucky. How was this letter written? That is, with reference to its dictation, or is it your own method?

A. All of the letters that I wrote were dictated to me. They were never in my own words.

Q. And that is true of this letter also?

A. Yes.

The Court: It is true of the letter dated October 13th to Dear Mr. Intermediary?

Witness: That is true of all of the letters I wrote.

510 Mr. Brown (Reading):

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"Dear Berry,

"I only had a small cut on my head and it has healed and I am otherwise all right and being treated nicely. The kidnapper found out last night that the intermediary, Mr. T. H. Robinson, and his daughter-in-law were being watched and that he couldn't give the money to his daughter-in-law because of the police. Both the kidnapper and I believe that you meant to deliver the money in good faith but that you are being double-crossed by the police. My life depends on this daughter-in-law not being shadowed so she can deliver the money. The kidnapper will not accept any other person other than this daughter-in-law to deliver the money. Therefore you must for my sake see that this girl is not interfered with or followed to her destination.

"I sent a letter with my wedding ring to Mr. T. H. Robinson.

"Because the law is double-crossing us the kidnappers refuse to release me until twenty-four hours after they receive the money from this girl.

511 "I know this is my last chance to be returned alive. If the money is delivered all right I will be released unharmed.

"Much love,

"Alice."

The Court: Now what is the date of that letter, Mr. Brown?

Mr. Brown: October 14th. Now I would like to introduce that letter, together with the stamps and the envelope as Government Exhibit No. 32.

(The above quoted letter is handed to the Reporter, marked Government Exhibit No. 32, and filed with the record.)

The Court: Mrs. Stoll, after you wrote and signed the letters, what did you do with them?

Witness: They were taken by the kidnapper to mail.

Q. Now Mrs. Stoll, did you at any time ever have any

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conversation with Robinson concerning the presence or absence of any confederates of his?

A. Yes, he led me to believe that he had two confederates.

Q. Now I will address your attention particularly to the morning of October 16, 1934. Did anyone that morning come to the door of the apartment?

A. Yes; they did.

Q. At approximately what time, if you have any
512 way of judging the time?

A. About 9 o'clock.

Q. When did you first learn that someone was at the door of the apartment?

A. I heard a knock on the door.

Q. Where were you at that time?

A. I was tied in bed.

Q. When you heard this knock, what did you do?

A. I called the kidnapper's attention to it.

Q. And what did he do?

A. He answered the door.

Q. And who entered the door at that time?

A. His wife.

Q. Do you know her name now?

A. Mrs. Robinson then.

Q. What was her first name?

A. Frances Robinson.

Q. When she came into the apartment did she have anything with her?

A. Yes; she had a bundle with the ransom money in it.

Q. What did she do with that money?

A. She threw it on the bed.

Q. Now what conversation, if any, took place between Frances Robinson and the defendant during that time?

513 A. She told him to hurry and get away as the police were following her.

Q. Did he make any response to that, that you can recall?

A. I cannot remember his answer.

Q. Now what next ensued with reference to this

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defendant's leaving the apartment?

A. He proceeded to talk to his wife in the other room for some time and dress. He did not leave before 11 o'clock.

Q. Can you tell the substance of the conversation that Robinson was having with his then wife in the other room?

A. No, I could not.

Q. With reference to the fact that he go alone or that she go with him?

Mr. Hogan: I object to that.

The Court: It is leading. Objection sustained.

Q. Was there any conversation with reference to Robinson's wife accompanying him?

Mr. Hogan: That is still leading and I object to it.

The Court: I think he can direct the witness' attention to the point that he wishes her to testify about without indicating the answer that she may make.

514 Mr. Hogan: But she has already said that she could not hear the conversation between Robinson and his wife.

The Court: Well, I think the question was did she hear any of it at all.

Q. At any time while Robinson and his wife were in the apartment did you hear any conversation between Robinson and his wife?

A. I heard him urging her to go away with him.

Q. Did you hear her response?

A. I heard her say that she did not want to go.

Q. Now when he finally prepared himself to leave the apartment, what did he do with you?

A. He locked me in the closet.

Q. And what else did he do?

A. He tied me in the chair as he always did when he left.

Q. Did he make any statements to you at that time with reference to your leaving the apartment?

A. Yes; he threatened to kill me if I made any attempt to leave before 24 hours.

Q. Was Mrs. Robinson still in the apartment?

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A. Yes; she was.

Q. What happened after he left and you remained in the chair bound?

A. I remained in the chair bound for approximately a half hour, and then he returned again.

515 Q. And at the time of his return were you still locked in the closet and bound in the chair?

A. Yes; I was.

Q. And how long did he remain on the second occasion in the apartment that morning?

A. Not long. He again tried to persuade his wife to go off with him.

Q. Did she go?

A. No.

Q. Then what did Robinson do?

A. He left again.

Q. How long after his second trip did you remain bound in the chair?

A. Not so very long; his wife untied me then.

Q. What happened next, Mrs. Stoll?

A. She went out and got something to eat.

Q. Did she also at any time during that morning get you anything to drink?

A. Yes she did; she got a bottle of beer.

Q. Did she then return to the apartment?

A. Yes.

Q. Well now at the time she went out for the sandwiches—did she leave the apartment once or twice, is what I am trying to get at?

A. One time, I think.

516 Q. Now how long then after Robinson left the apartment and Mrs. Robinson untied you, did you and Mrs. Robinson remain in the apartment? Your best judgment?

A. I think we left the apartment around two o'clock.

Q. Now, what time did Robinson, on the second occasion leave the apartment? Your best judgment?

A. About a half hour after he had gone the first time.

Q. Well do you remember what time he first left the apartment?

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A. About 11 o'clock.

Q. Now then how did you and Mrs. Robinson determine where you were going?

A. I had read in the paper that the Rev. Clegg who lives in Indianapolis, and who was a cousin of my husband, I read that he lived there, and I asked Mrs. Robinson to take me there.

Q. Up to that time had you ever met the Rev. Clegg and Mrs. Clegg?

A. No, I had not.

Q. What was your condition—

The Court (Interrupting): Now we are not going to have people coming in here and getting up and going out while the witness is testifying. No one is going to be permitted to leave the court room or come in while this
517 witness is testifying. If you want to go out before that, leave now, or be prepared to stay here while this witness is testifying. Let's not interrupt the testimony while this witness is on the stand.

Q. What was your condition, Mrs. Stoll, at the time you left that apartment?

Mr. Hogan: Wait just a minute now. If Your Honor please, that is highly objectionable in view of the fact that the condition of this indictment—I would like to be heard on that, if Your Honor please.

The Court: All right, I will be glad to hear you. You may step up here to the bench.

(Conference between the Court and counsel:)

The Court: Will the Reporter read the question?

(The last question written above was read.)

The Court: Do you mean physical condition?

Mr. Brown: Yes, Your Honor.

The Court: Do I understand that there is an objection to that?

Mr. Hogan: There is an objection to the answer to that question, and my objection is based upon this point: The indictment in this case is an indictment drawn in the language of the statute, or statutes, to-wit: Sections 408 and 408b, Title 18, of the United States Code Annotated.

The concluding sentence or phraseology of page 3

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518 of this indictment, just before the phrase, "Against the peace and dignity of the United States, and contrary to the form of the statutes in such case made and provided," is the term "and did not liberate her unharmed."

Now, it is the contention of the defendant that that term, "and did not liberate her unharmed," in the language of the statute itself is not sufficient in the eyes of the law with which to notify this defendant what issues upon that subject he is called upon to meet in the proof of this case.

An indictment is always most strictly construed against the drawer of the indictment. That is a general proposition of law and I submit it does not need any elaboration upon. That is a term which we are all familiar with, and if there need be any question about that, I am prepared to furnish the Court with ample authorities on that.

There is another generally known proposition of law that there cannot be introduced evidence when there is not pleadings to support it. Evidence without pleadings is just as unavailing as pleadings without evidence.

While the term "and did not liberate her unharmed," as I have said a moment ago, is in the language of the Statute, it is not such a term as is generally understood by the courts or by those whose duty it is to interpret them;

and certainly it may not be left to speculation as to
519 what that term may mean or may include.

The term "And did not liberate her unharmed" could mean that she had the slightest pin-scratch on her arm. It could mean that every bone in her body was broken. It could mean that she had a black eye.

The Court: Is there anyone in a better position to know what her condition was than the kidnapper? Was he taken by surprise when the indictment charged that she was not liberated unharmed? Whoever the kidnapper was knows exactly what the facts were there.

Mr. Hogan: He can only know what the facts were by what the indictment charges. When he comes into this court or any other court on an indictment, he cannot know what the proof is going to be introduced as to the nature and extent of the injuries.

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The Court: The kidnapper was there and knows what happened.

Mr. Hogan: That is granted, Your Honor.

The Court: Then he ought to know what the testimony is going to be.

Mr. Hogan: But the burden should not be on him to overcome a defect in the indictment. The burden is upon the government of the United States to draw and present him with a complete indictment in the beginning, so that when he comes into court he is prepared to meet what
520 is set out in that indictment.

The Court: I think a motion for a bill of particulars might have been asked for by you. If you think the term is ambiguous, if you want to know in what respect she was harmed, whether it was a broken arm or a scratched face by a pinpoint, you may have asked for a bill of particulars, but I don't think you need one in this case.

Mr. Hogan: But my point is—I surmised that the Court, in taking the contrary view a moment ago was going to say to me that that could have gotten by a bill of particulars and, meeting that situation, I will refer the Court to a case which said that that would be a futile and useless thing, and would not serve to make any otherwise imperfect indictment any better than it was in the very beginning.

The Court: Of course, if an indictment is imperfect, a bill of particulars doesn't cure it; but I have no view that the term "liberate her unharmed" is so ambiguous and so confusing that the ordinary person does not know what it means. It is very plain language. We know what "liberate" means; and we know what "unharmed" means, and to say that we have got to define that more closely seems to me to be a rather strained point of view.

Mr. Hogan: If it is not what Your Honor, the Court might understand that term to be, but it is what the
521 defendant might understand that term to be, or what he may expect to meet.

The Court: Well I think the defendant is an ordinarily reasonable man and would have no difficulty in understanding what that term means.

Mr. Hogan: Now, I want to point out, further, in my

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argument that the indictment charges further in the language of the statute, that this defendant did knowingly transport and cause to be transported in interstate commerce a person who had been unlawfully seized, kidnapped and abducted.

Well, now following the line of view that the Court has expressed about this term, "liberate unharmed," I submit that there is not anybody in this court room who does not have a generally fair idea of what that term "interstate commerce" means, but yet the legislature which passed that law came along and used up Sections 408 and 408½ of Title 18 to describe what is meant by the term "interstate" or "foreign" commerce. Now the legislature did not give any definition of the term "liberated unharmed" or "not liberated unharmed." Therefore, the term being a new term and certainly came into being following the passage of this law which was passed in 1932 and amended in 1933, that term has never had much opportunity in the courts to be defined.

Therefore, if the courts have not had an opportunity to define it, certainly the defendant, a layman, could not understand what the term means or covers in the indictment.

The Court: I understand your point, Mr. Hogan, and I believe on account of your being counsel in this case it was your duty to make it, and you have made it; and to argue it, and you have argued it. It is highly technical from my point of view and I don't think that I can maintain it.

You may take the motion as overruled and make your exception.

Mr. Hogan: That is all right—I mean, it is not really all right but it is all I can do about it; and I will have to reserve my exceptions.

Q. Now, Mrs. Stoll, at the time you left that apartment—

Mr. Hogan (Interrupting): Now Mr. Brown may I interrupt? I don't want to be obnoxious and every time a question about her injuries might be brought up to interpose an objection, but I would like to have it understood

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that any time any question of her injuries or any extent of her injuries or what she claims her injuries to have been at the time she was liberated is brought up, I would like to have the record note my objection to that.

The Court: I understand that it is based on the same point that you have just made?

523 Mr. Hogan: On the same point.

The Court: But if you have any additional points to make, they should be made. Unless an additional point is made, we will understand that it is based on the same point that you have just argued without having to renew your objection.

Mr. Hogan: Yes, sir, without my taking an exception each time.

The Court: And likewise overruled, and likewise you are excepting.

Mr. Hogan: That is right.

Q. All right, Mrs. Stoll, will you tell the jury what was your physical condition at the time you left that apartment on October 16, 1934?

A. My head was still thickly clotted with blood and I was in a very weakened condition. I could hardly walk a block.

Q. What was the condition of your mouth?

A. I still had raw sores on my lips from the adhesive tape that had been put on and off so much.

Q. Now, after you walked that block with Mrs. Robinson and obtained that taxicab, where did you and Mrs. Robinson go?

A. We went to the home of Rev. Clegg.

Q. At that time was Dr. Clegg at home or just
524 Mrs. Clegg?

A. No, they were both at home.

Q. Now there is one point that I overlooked that I want to ask you about. Mrs. Stoll, I direct your attention back to the ransom money you have already testified about. Did this defendant, Thomas Robinson, give to you or to anyone in your presence any portion of that ransom money?

A. Yes; he gave to his wife some money that my family had given to her for traveling expenses, but it was

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not the ransom money.

Q. Some other money rather than the ransom money. Is that right?

A. Yes.

Q. Now, after you arrived at Dr. and Mrs. Clegg's without relating any conversation that you had with them, as a result of your request, what was done then?

A. They took me to my home.

Q. Was that from Indianapolis, Indiana?

A. Yes.

Q. Where did you start back to? Louisville, Kentucky?

A. Yes.

Q. How far did you get?

A. Oh, I think we got almost to Jeffersonville before we were stopped by agents of the Department of Justice.
525

Q. At that time did you leave Dr. Clegg's car and get into another car?

A. Yes.

Q. Where were you brought then?

A. To my home.

Q. Back here? On Lime Kiln Road?

A. Yes.

Q. Mrs. Stoll, the ransom note that has heretofore been testified about, did you ever at any time see the ransom note?

A. No; I did not.

Q. Now, Mrs. Stoll, I will direct your attention again to the kidnap hideout in Indianapolis. With reference to the presence or absence of any telephone in that apartment, tell the jury your recollection on that?

A. There was no telephone in the apartment.

Q. And at any time did you ever discuss with the defendant Robinson what schooling or education that he had?

A. Yes, when he told me that it was known who he was and what his name was, on the second day he told me he had been to Vanderbilt University at Nashville.

Q. Upon your return home, Mrs. Stoll, were you placed

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under the care of Dr. Frazier?

A. I was.

526 Mr. Hogan: Your Honor, that is highly leading.

The Court: It is leading. Objection sustained.

It may be rephrased.

Q. Mrs. Stoll, after you returned home, did you receive any medical attention?

A. I did immediately, from Dr. Frazier.

Q. Dr. Harry Frazier, of this city?

A. Yes.

Q. Mrs. Stoll, on your return to Louisville, while Mrs. Robinson was in the car, was any money delivered to you by Mrs. Robinson?

A. Yes; she turned over the ransom money—the money that Robinson had given her.

Q. Do you know how much money it was? You don't know how much money it was? Do you or do you not know how much money it was?

A. No; it was part of the ransom money he had given her.

Q. What did you do with the money with reference to giving it to your husband or the FBI?

A. The Agent of the FBI had it a part of the time, they then gave it back to me, and I gave it to my husband.

Mr. Brown: That's all.

527 At this point a short recess was had, after which the following proceedings were had:

The Court: With respect to the spectators who are in the court room, I will repeat again, in case some of you have come in during the intermission, that people coming in and out so frequently as they have been doing today interferes with the proper taking and hearing of evidence. It is apt to distract the attention of the jury and also the parties in the case, and I am accordingly going to ask you that unless you are willing to stay in here during the time that the particular witness is on the stand, not to start. People will not be allowed to leave the court room or come in the court room while a witness is on the stand. At the close of each witness, people can leave and others can come in. I don't want this running in and running out while the

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witness is testifying.

Mr. Brown, is that all for the direct examination of this witness?

Mr. Brown: Yes, Your Honor.

The Court: All right, Mr. Hogan.

Cross-examination by Mr. Hogan.

Q. Mrs. Stoll, what is your age?

A. Thirty-seven.

Q. In October, 1934, then, you were twenty-eight.

A. That's right.

528 Q. How tall are you?

A. About five foot three or four.

Q. Are you any heavier or thinner today than you were then?

A. I think I am a little heavier.

Q. Do you recall what your weight was nine years ago, or, rather, in October, 1934?

A. No, I do not.

Q. And what is your weight today?

A. About 115.

Q. You are the daughter, of course, of Mr. Will S. Speed of this city?

A. I am.

Q. On October 10th, 1934, was your attention attracted to this car or to any car that pulled into the driveway of your home on the Lime Kiln Road?

A. I heard a car drive up.

Q. Did you look out the window and see that car?

A. I did.

Q. And did you observe then what type of car it was?

A. I noticed it was a black car, black or dark blue, I can't remember which.

Q. Did you notice any other color distinction about that car?

A. No, I did not.

529 Q. Did you notice that the wheels were yellow?

A. I can't remember that I did.

Q. Did you remember anything at all about the color of the wheels?

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A. No.

Q. So you are not prepared to say now what the color of the wheels was on that car?

A. No, I am not.

Q. You were then, when you noticed this car coming into your driveway, in your bed room?

A. I was.

Q. And that bed room is on the second floor of your home?

A. Yes.

Q. The guest room, I believe, is across the hall from that bedroom of yours?

A. It is.

Q. Now, with reference to the furniture in your own individual bed room at that time, I would like for you to tell the court and the jury what articles of furniture were in that individual bedroom.

A. A pair of twin beds and two chests of drawers, dressing table, chair, sofa, several small tables.

Q. Was that a large chair or just an ordinary type of chair?

530 A. Ordinary arm chair.

Q. Would you call it an overstuffed chair?

A. There was one, yes.

Q. Was there any pillow used in connection with that chair?

A. It had cushions, two cushions in it—one cushion, I think.

Q. In addition to the cushions, would you sometimes use a pillow to rest in that chair?

A. No.

Q. Now, in this guest room across the hall, will you tell what furniture was in that room?

A. There was a bed and two chests of drawers, a little dressing table, a rocker and chair.

Q. Did you use a pillow in connection with the rocking chair or any chair in the guest room?

A. Not in connection with the chair, no.

Q. I refer to a soft type of pillow that is sometimes used to rest your back or assist you to rest in a chair.

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A. No. I think there were two pillows on the Chaise lounge in my bed room.

Q. Those were pillows not used upon the bed.

A. That's right.

Q. Now, when this man who had driven up to your
531 home came in, I believe you heard him talking to the maid.

A. I did.

Q. Was that the same voice that you heard from the man who later came up to the guest room?

A. Yes.

Q. How long, from the time you heard the voice of the man downstairs, until you saw that man in the guest room upstairs?

A. I don't know, between a half hour, I imagine—about a half hour, I imagine.

Q. Were you ill on this day?

A. I was. I had a bad cold.

Q. Was that the only trouble that you were experiencing on that day?

A. That's true.

Q. What had been the condition of your health up to that time?

A. Very good.

Q. You had not required any medical attention up to that time?

A. No.

Q. Could you hear this man moving about the house before you finally came face to face with him?

A. Yes. I could hear him working on the telephone. I could hear his voice talking on the telephone.

532 Q. What was the gist or nature of that conversation?

A. I heard him talking as any telephone repair man does.

Q. Did he appear to be talking to the home office of the phone or to some other repair man?

A. He did. He seemed to be talking to some other repair man on the telephone.

Q. Did he come first upstairs to the bedroom that you

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had vacated, before he went to the basement of your home?

A. Well, I don't know when he went to the basement. I was upstairs.

Q. Do you know whether he ever went to the basement or not?

A. I didn't see him go to the basement.

Q. Well, did you hear him in the basement?

A. No, I don't think I could from upstairs. I couldn't hear him in the basement.

Q. How many rooms were in your home on this road?

A. Living room, dining room, kitchen, small pantry, two bed rooms and a bath room, and another small room.

Q. You didn't see him when he went into the bed room that you had vacated?

A. No. I was in the guest room with the door
533 closed.

Q. Could you hear this voice of this man talking to the maid as you were in the guest room?

A. Yes.

Q. It was plainly distinguishable.

A. Yes.

Q. No question but that was the same man whom you had heard downstairs in the beginning?

A. Yes.

Q. When this man who you say is the defendant came into the guest room in which you were then situated, were you sitting in a chair?

A. No, I don't think so. I think I was walking around the room.

Q. Then you were not so ill that it required you to be in bed.

A. Yes, I had been resting all day, but when I heard someone upstairs I got up and started walking around.

Q. Well, you had heard this walking around, though, in your bed room that you had vacated?

A. Yes.

Q. Were you alarmed at this man walking around upstairs before he came into your room?

A. No, I wasn't. I thought he was working on the telephone.

Q. Had you been in bed in your own room before

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534 you moved across the hall to the guest room?

A. I had been resting.

Q. Do you recall now whether you were resting on the bed in the guest room or whether you were sitting in one of the chairs in the guest room when this man came into that guest room?

A. I don't remember exactly what position I was in.

Q. You can't say whether you were on the chair or on the bed?

A. No, I can't.

Q. When he came into the guest room, were you standing up or sitting down or lying upon the bed?

A. Oh, I am quite sure I was standing up.

Q. In what part of this guest room were you as he entered the door?

A. I think I was right near the door.

Q. So that when he came through the door, you were right face to face with him.

A. Yes.

Q. Did that alarm you at that particular moment?

A. Yes, it did. I was very much alarmed to see a strange man walking into my room.

Q. And what were your words to him?

A. "What are you doing in here?"

535 Q. Did you recognize him?

A. Of course not.

Q. Did you smile at him?

A. Of course not.

Q. Did you greet him in any other way than the way you have indicated, "What are you doing in here?"

A. I did not.

Q. I believe you stated on direct examination that after he announced his mission there, that you talked considerably to him.

A. Yes, I did. I tried to think of every argument I could think of to keep him from taking me away.

Q. He had not struck you up to that time?

A. No.

Q. Were you excited, or nervous, or calm?

A. I was very nervous.

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Q. How did you manifest your nervousness?

A. Well, I don't know how I manifested it. I was nervous.

Q. Did your speech indicate that you were nervous or were you calm in your speech?

The Court: That's largely for someone else to testify to, isn't it, as to what her speech indicated?

Mr. Hogan: I can ask her, and I believe I will ask her, if she had any trembling in her voice.

A. I don't know whether I did or not, but I know
536 I was very nervous.

Q. Where was the maid when this man came through the door to the guest room?

A. She was in front of him.

Q. How far behind the maid was he?

A. Right behind her with a gun.

Q. Was he close enough to touch her with a gun or was he some feet back?

A. No, I think he was close enough to touch her with a gun, as I recall.

Q. Was he or not touching her with a gun?

A. I don't know whether he was actually touching her with a gun, but he was right behind her.

Q. What did he respond after you said, "What are you doing in here?"

A. He said he had come to kidnap me.

Q. What response did you make to that?

A. I can't remember my exact words, but I was certainly very much aghast.

Q. Did you say, "You can't get away with that. You are not a professional?"

A. I am sure I did not.

Q. Did you say anything about being Mr. Speed's daughter?

A. I don't think so.

537 Q. Do you say that you did not say any such words?

A. I do.

Q. You say now that you did not make any such expression?

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A. Say what words, that I was not Mr. Speed's daughter? I don't know whether I did or not. I don't know whether he asked me. I am sure if he asked me if I was Mr. Speed's daughter, I would have said I was.

Q. Did you say anything to him in these terms or words to this effect, "You can't get away with this. You are not a professional."

A. No.

Q. "I am W. S. Speed's daughter."

A. No, I didn't say that.

Q. After he told you, as you said, that he was going to kidnap you, did you believe that he meant to do that?

A. I certainly did.

Q. Did you move away from the door or change your location in that room?

A. I don't remember that I did.

Q. In other words, did you sit in the chair or go sit upon the bed?

A. No, of course not.

Q. You just stood there.

A. Yes. I was trying to think of some way to
538 get away, if possible. I know I didn't sit down.

Q. What inducement monetarily or financially did you make to leave there?

A. I offered him a check.

Q. In what amount?

A. No amount that I know of.

Q. Up to that time he had not said anything at all to you about money, had he?

A. No.

Q. Then you did not, then, know whether he wanted money or wanted you, did you?

A. No, I didn't.

Q. Did you produce a check and attempt to write it?

A. No, I did not.

Q. Did you tell him in what amount you would fill the check out for?

A. No. I offered him a check, and that didn't seem—he said that wouldn't do any good, he was going to kidnap me anyway.

Testimony of Mrs. Alice Speed Stoll

Q. He didn't display to you or in your presence the ransom note or the envelope in which it might have been contained.

A. No.

Q. Did he have adhesive tape on him?

539 A. Yes.

Q. Now, to refresh your recollection, I will ask you if he didn't find the adhesive tape in a dresser drawer in your home.

A. No. I don't think he did. I don't keep adhesive tape in dressing table drawers.

Q. Do you say that you did not have any adhesive tape there?

A. I am sure I didn't in the dressing table drawer.

Q. Well, in any drawer or any location?

A. I usually keep adhesive tape in the bath room, but he didn't enter the bath room.

Q. He did not go into the bath room for any adhesive tape then.

A. No.

Q. The question is, whether he had the adhesive tape on him or whether it was necessary for him to or whether he got it in your home.

A. He had it on him.

Q. Did he bind your feet or legs in any manner?

A. He did.

Q. Before you left the house?

A. When I was in the car he did.

Q. Before you left the house was your movement impeded?

540 A. My wrists were bound, but my feet were not bound until I was placed on the floor of the car.

Q. What was the maid doing while you say he was binding your wrists with this wire?

A. She bound the wrists. He stood there with a gun and told her to.

Q. Did she have any trouble in doing that?

A. Why, she was very nervous.

Q. Did she get so confused that she couldn't carry out his directions?

Testimony of Mrs. Alice Speed Stoll

A. No, she bound them very tightly.

Q. Isn't it a fact that she got so confused that she could not do it, and that this man here assisted in doing it or did it himself?

A. He may have ended up by doing it tighter, but he certainly didn't—she started it. I can't remember whether he finished the job or not, but I know it was very tight.

Q. You think she bound you up then completely without any assistance from him?

A. No. I don't know whether he finished it or not, but I know he stood there with the gun.

Q. Now, he didn't during all of that time spent in that guest room, have that gun pointed at you or at the maid either, did he?

541 A. During the time it was on the bed he didn't.

Q. I will ask you if the gun was not placed at one time upon the mantel.

A. There is no mantel in that room.

Q. Or upon the dresser in that room.

A. No.

Q. That didn't happen?

A. No.

Q. Now where did you have a gun? Where was the location of your gun?

A. In the bed room, my bed room.

Q. That was, of course, across the hall from where you were then?

A. Yes.

Q. Had he struck you before you attempted to get your gun?

A. He had hit me the first time, yes.

Q. That first time didn't draw any blood, as I take it.

A. No.

Q. That was not a very hard blow?

A. Yes, it was. It caused a fracture.

Q. But it drew no blood or made no scalp wound.

A. It was on the bone.

Q. It didn't make any break in the flesh.

542 A. Yes, it did, but it was on the bone and it didn't bleed as hard as the other.

Testimony of Mrs. Alice Speed Stoll

Q. What was that answer?

A. I said he hit me on my forehead the first time so that it didn't bleed as hard as the second time.

Q. What was done with the maid when you were asked to go to the car with him?

A. She was bound up in the guest room.

Q. Did you express any anxiety or wish to leave there?

A. To leave the house?

Q. Yes.

A. Of course not.

Q. You didn't do that?

A. Well, when he made the remark that he would kill Berry if he arrived while he was still there, I didn't resist any further.

Q. But were you anxious to go or did you express any desire or anxiety to get away from there?

A. Well, I was anxious to get away before Berry came.

Q. Oh, you were anxious to get away then.

A. I was only anxious to get away before Berry came, I was afraid he would shoot him.

Q. Did you express that anxiety to this defendant?

543 A. I don't know whether I did or not.

Q. Or anxiousness?

A. I don't know whether I did or not.

Q. You did not, then, wholly resist and try to remain in your home.

A. I did resist to every ounce of my strength.

Q. But then when you believed your husband might be on his way, you became anxious to get away from there at that time.

A. No.

Mr. Brown: I submit she has answered that question. He is putting words in her mouth.

Mr. Hogan: She is on cross-examination.

Mr. Brown: I submit she has answered.

The Court: I think she has answered the question once. If you want to ask it about some other point I think you can. Is there any reason to go over it again?

Mr. Hogan: I just wanted a clear answer to it. I will not ask it any more. I think we have had it pretty well

Testimony of Mrs. Alice Speed Stoll

answered.

Q. You mentioned on direct examination, Mrs. Stoll, that the car turned to the left after it left the Berry Stoll or your home estate.

A. Yes.

Q. And you mentioned that a stop was made
544 somewhere along the way.

A. Yes.

Q. At what juncture or just what lapse of time had occurred when that stop was made?

A. I can't recall exactly. I think I said about a half hour, but I have no way of knowing exactly. It might not have been that long.

Q. Well, had enough time elapsed then for the car in which you were being driven to have gotten out of the City of Louisville?

A. I imagine so.

Q. I understood you to say this morning that he made a remark when the car stopped, "O. K."

A. I did.

Q. Was there any answer to that remark?

A. Not that I heard.

Q. Didn't the car on its journey through the streets of Louisville make some stops at the stop lights?

A. No, not that I was aware of.

Q. You were in the back of the car?

A. I was.

Q. You would have been able to have determined or detected that the car was stopping or slowing down from the momentum or cessation of the momentum of the car, would you have not?

545 A. I would have known if it was slowing down.

Q. You would have known if it were stopped, too, would you not?

A. Yes.

Q. Because you did know it.

A. Yes, I would have known if it had stopped.

Q. With that in mind then, did the car stop momentarily for some seconds, long enough to stop at some stop lights in Louisville?

Testimony of Mrs. Alice Speed Stoll

A. Not that I can recall, no.

Q. To have gotten from Lime Kiln Road to the Brownsboro Road would have necessitated a travel of some two miles, would it not?

A. Yes.

Q. And to have gotten through Louisville, it would have necessitated a turn to the right at the junction of Lime Kiln with the Brownsboro Road.

A. Yes.

Q. Do you know or are you able to say whether the car turned left or right?

A. No.

Q. At any time after it originally turned left?

A. No, I don't know.

Q. So then you are not in position to say whether the car went out Brownsboro Road away from Louisville
546 or in Brownsboro Road towards Louisville on that journey, are you?

A. No.

Q. Assuming that this car went over the Municipal Bridge into Jeffersonville, would the time that elapsed between the time the car turned left from your place to the time the voice of the driver in the car had said "O. K." have been just about the time that it would have taken to drive from your home to Lime Kiln Road, in Brownsboro Road to Louisville and to the Municipal Bridge pay stations or pay stops?

A. I suppose that's possible.

Q. That took just about that much time then.

A. I tell you, I was not aware of time. I don't know.

Q. The driver said "O. K." when the stop that you mentioned occurred.

A. Yes.

Q. Had you been across the Municipal Bridge at any time in your life?

A. Yes.

Q. You are familiar with those platforms there where the bridge attendants stand?

A. Yes.

Q. They are elevated upon platforms, are they not?

Testimony of Mrs. Alice Speed Stoll

A. Yes.

547 Q. That gives the bridge attendant a view into the interior of the car, does it not?

A. Yes.

Q. Did you utter any sound, or try to, when this car pulled up and stopped and the driver said "O. K."

A. No. My face was covered over with a blanket and newspaper. I didn't know where I was.

Q. But you did know that the driver was having a conversation with somebody.

A. Yes. How could I utter anything? My mouth was taped up with adhesive tape.

Q. Not whether you could utter any intelligible words, but did you moan or make any sound, or try to?

A. No. I couldn't have made much sound, the condition I was in.

Q. But the point is, you didn't try to.

A. No, I didn't try to. I couldn't. My mouth was taped with adhesive tape.

Q. Have you ever made a test of taping your mouth and determining whether or not you can moan?

A. No, I haven't.

Q. You don't know whether you could make a sound with your mouth taped?

A. Yes, I do. I tried to in the closet in Indianapolis.

548 Q. You didn't mention that on direct examination, Mrs. Stoll, about the closet.

A. Didn't mention what?

Q. Trying to make a sound in the closet, while you were on direct examination.

Mr. Brown: She wasn't asked about it.

The Court: I don't think she was asked about it.

Q. Then after this car stopped and the word "O. K." was uttered, how far or how long, rather, did it take before you were taken into what you said was a garage?

A. I think I answered that before. I said a little over two hours.

Q. The driver then left and came back and made some remark about "things are not in order," or words to that

Testimony of Mrs. Alice Speed Stoll

effect.

A. I didn't understand what you said.

Mr. Hogan: Will you read the question, please.

(The last above question was read by the reporter.)

A. Yes.

Q. How much other time elapsed before the tape was removed from your mouth and you were unbound?

A. I think I answered that question before. I said about a half hour or so.

Q. You were then in the suburbs of what the
549 driver told you was Indianapolis.

A. Yes.

Q. Then, of course, you were able to talk, and I presume did talk to him.

A. I wasn't able to talk until the adhesive tape was removed from my mouth.

Q. After that was removed, you did talk to the driver.

A. Yes.

Q. Were you put in the front seat or in the rear seat when the adhesive was taken off and the wire was taken from around your feet?

A. In the front seat.

Q. What is that?

A. In the front seat.

Q. When you got to this apartment, the defendant expressed a desire for some food, is that correct?

A. Yes.

Q. And I believe you stated that you cooked him some eggs.

A. Yes.

Q. What kind of eggs did you fix?

A. Scrambled eggs, I think.

Q. Was there coffee or bread in the kitchen there?

A. Yes.

550 Q. Did you eat any of the eggs?

A. Yes.

Q. Did you drink some of the coffee?

A. I can't remember. I think I did.

Q. Was there coffee made on that occasion?

A. Yes.

Testimony of Mrs. Alice Speed Stoll

Q. Who made the coffee?

A. I think I did. I don't remember.

Q. Did he drink some of the coffee?

A. I think so.

Q. Was anything else eaten at that time?

A. No.

Q. What time of the day or night was this?

A. About 7:00 o'clock, I think.

Q. After you had this meal consisting of eggs and coffee, what time was it then?

A. I really couldn't say. About 7:30, I guess. I don't know.

Q. What transpired between the time that you consumed the eggs and coffee until you say you were thrust in bed on that first night?

A. Nothing at all.

Q. What was the lapse of time between the time you ate the eggs and the time you say you were thrust in bed on that first night?

551 A. I don't think there was any lapse of time at all because I was sick right after I ate the eggs.

Q. Did the eggs make you sick or were you sick otherwise?

A. No, I was nauseated.

Q. Did the eggs cause that?

A. Yes.

Q. In other words, your own cooking nauseated you.

Mr. Brown: I object to that statement.

The Court: I believe it is better to put it in sequence of time. There may have been a number of things that nauseated her. Following the eating of the eggs.

Q. Following the eating of the eggs, Mrs. Stoll, how long was it before you became nauseated?

A. I think right away.

Q. Were you permitted to go into the living room of this apartment before or after you prepared these eggs?

A. Yes.

Q. Did you sit down in the chair or on the divan in that room?

A. I think I did.

Testimony of Mrs. Alice Speed Stoll

Q. And you were able to and did converse with the defendant on that occasion?

A. Perhaps I did. I can't remember the conversation.

Q. Without being able to detail the exact words, 552 what was the topic of that conversation that first night after you had eaten and partaken of the eggs?

A. I can't remember any topic of conversation at all. I was feeling too ill at that time to talk.

Q. What did you do to cure or arrest your nauseated condition?

A. I lay down.

Q. Did you go into the bath room when you were nauseated?

A. I can't remember whether I did or not.

Q. The bath leads, as you have already indicated, off of the living room?

A. Yes.

Q. How long did you have a conversation with the defendant on this first night before you laid down on the bed?

A. I can't recall.

Q. Well, about how long?

A. I told you I couldn't remember any topic of conversation. I was feeling too ill.

Q. No, not the topic of conversation, but what time transpired from the time you were nauseated until you laid down on the bed?

A. I couldn't tell you that.

Q. Well, was it an hour?

A. I don't think so.

553 Q. Was it longer than that?

A. No, I don't think so.

Q. How much less than an hour was it?

A. Well, I really wasn't conscious of time.

Q. Did you sleep in one of the twin beds in the bed room?

A. I did.

Q. Did he sleep in the other twin bed on that occasion?

A. He did.

Testimony of Mrs. Alice Speed Stoll

Q. When did this conversation arise with respect to time as to whether or not he was going—about the molestation of you?

A. I think that I had that conversation right after I got there.

Q. Up to that time had he given you any evidence or indication that he might want to molest you?

A. No.

Q. He had behaved perfectly so far as molestation—

A. Yes.

Q. —up to that time?

A. Yes.

Mr. Brown: I don't know what you mean by perfectly. She had received two blows on the head.

Mr. Hogan: She has answered the question.
554 Your objection is too late.

The Witness: Well, if you mean—

The Court: Let the witness explain if she has any explanation as to what she meant.

The Witness: He had not attempted to molest me any further after the blows on the head, if that's what you mean.

Q. So you slept in that bed that first night without being molested.

A. That's right.

Q. What time did you awaken or arise the next morning, which would have been Thursday morning, October 11th.

A. I think it was near noon.

Q. What time did the defendant arise that Thursday morning, October 11th?

A. About that time. I was tied in bed, I couldn't arise.

Q. Had you indicated any desire to arise before that time?

A. Well, I can't remember. My head was going around in circles the next morning.

Q. Your best recollection is that you made no request to be allowed to get out of the bed until about 11:00 o'clock, October 11th, which was Thursday.

555 A. Possibly.

Testimony of Mrs. Alice Speed Stoll

Q. Then when you did get out of there, did you get out of your own volition or accord, or by request from you?

A. I think I probably asked to have my hands untied. I am sure I did.

Q. And that wish was acceded to and you were untied.

A. Yes.

Q. That was about 11:00 o'clock. What did you do about food on that second day?

A. I really can't recall what happened the second day, I was feeling too badly.

Q. Did you stay up the remainder of that day?

A. I can't remember.

Q. Did the defendant require any food?

A. Yes.

Q. Who fixed that food?

A. I don't remember. He went out and got food quite frequently.

Q. Did you prepare it or assist in the preparation of it?

A. I did on some occasions.

Q. Did you on this October 11th?

A. I can't recall that I did.

556 Q. How many meals do you recall that he ate on October 11th?

A. I told you I couldn't remember anything about that.

Q. Except for the time that he went out and was out procuring provisions or otherwise was absent from the apartment, how did you and he spend the time—in conversation?

A. Sometimes.

Q. What was the topic of the conversations usually?

A. The progress of the kidnapping, whether he had been able to contact my family, things such as that.

Q. He did not attempt to withhold any news from you, did he?

A. Well, he didn't tell me very much.

Q. He brought you the Indianapolis newspapers?

A. Yes.

Testimony of Mrs. Alice Speed Stoll

Q. You were free to read and did read those papers?

A. Yes, that's true.

Q. How long did he absent himself on Thursday, October 11th, during the daytime?

A. I told you before that I really couldn't remember what happened that day, I was feeling too badly.

Q. Did you ever have occasion to go into the bath room?

A. Yes.

557 Q. And did you go into the bath room?

A. Yes.

Q. When was the first occasion that you went into the bath room?

A. I don't remember exactly the first occasion. It was the night I got there.

Q. You went in there the night you got there?

A. Yes.

Q. Did you go alone?

A. Always.

Q. Closed the door, I take it?

A. Yes.

Q. Did you lock the bath room door when you went in?

A. No.

Q. You could have done that, could you not?

A. Possibly I could have.

Q. But you didn't do that.

A. No, he was sitting outside on the sofa with a gun all the time I was there.

Q. But you could have locked the door and the door would have been locked between you and him?

A. Possibly, only he told me that I could close it, but not tight.

Q. Well, you stated a moment ago you did close it.

A. Yes.

558 Q. And you did do that?

A. Yes.

Q. So having it closed, it would have been but a small matter to have turned that catch or latch on the inside of that bath room, would it not have?

A. I suppose I could have.

Testimony of Mrs. Alice Speed Stoll

Q. You never did do that during the whole time you were in that apartment, did you?

A. I can't remember whether I did or not.

Q. Mrs. Stoll, I show you Government Exhibit No. 13, and ask you if that does not represent the bath room window as viewed from the outside.

A. Well, I never saw the window from the outside.

Q. By what way did you enter this apartment?

A. Entered through the kitchen door, but it was dark so that I could not see anything.

Q. So on that occasion you were required to pass by this bath room window.

A. Possibly was, but it was perfectly dark and I couldn't see anything.

Q. Mrs. Stoll, I will show you a photograph of what purports to be the inside of that bath room, showing the condition existing as of the time you claimed you were in this apartment. Does that fairly and truly represent the condition as you remember it?

559 A. I guess so.

Q. Now that shows, I believe, a portion of the bath tub, is that correct?

A. I really can't remember what the bath room looked like.

Q. Well, that picture looks to represent the condition as you remember it on that occasion, does it not?

A. Well, I really, to tell you the truth, can't remember what the bath room looked like. I have no recollection of what it looked like.

Q. Did it have a window in it?

A. I don't know whether it did or not.

Q. Does that look like the window in the bath room in question?

A. Well, I think I stated before, I can't remember what the bath room looked like.

(At this point counsel for the defendant handed the photograph to the jury.)

Mr. Brown: You haven't done anything with it yet.

Mr. Hogan: She said that it represented or did represent—

Testimony of Mrs. Alice Speed Stoll

The Court: She said she didn't remember, as I understand.

Mr. Hogan (To the reporter): Would you go
560 back and read—

The Court: We can get her own testimony from it.

The Witness: I said I really couldn't remember what the bath room looked like.

The Court: Can you or are you able to identify that picture as a fair and correct picture of that bath room or not?

The Witness: No.

The Court: That's the answer.

Q. I'll show you another photograph which purports to represent the bath room door of that bath room of that apartment in a closed position, alongside of which purports to represent a cabinet or linen cabinet of some type. Does that represent truly or accurately, or as you remember, the cabinet and closed door of that bath room?

A. No. I really don't remember anything about what the bath room looked like.

Q. Is there anything wrong with your memory, Mrs. Stoll?

Mr. Brown: That's objected to.

Mr. Hogan: She said she can't remember.

A. It is very hard after nine years to remember exactly what a bath room looked like.

Q. Is it any harder after nine years to remember
561 what a bath room looks like that—

The Court: I think the question is argumentative.

Mr. Brown: Purely.

The Court: Isn't it a question of argument?

Mr. Hogan: I didn't intend it so, Your Honor.

The Court: It is not a fact. It is a question of opinion, isn't it?

Q. Is your recollection of the bath room or failure of recollection of the bath room, any worse today than your recollection of what this defendant looked like or what he did nine years ago?

A. Of course not.

Testimony of Mrs. Alice Speed Stoll

Q. Do you just don't want to remember what the bath room looked like?

Mr. Brown: I suggest the witness has given every indication of wanting to tell a truthful story. That's argumentative.

Mr. Hogan: I am trying to ask question of fact without any argument at all.

The Court: All right, proceed, but don't proceed unduly on the same point, Mr. Hogan.

Mr. Hogan: All right, sir.

Q. Now, how many times during the seven days that you were in this apartment, did you have to use the
562 bath room?

A. Oh, every day.

Q. At least once, and I take it more than once.

A. Yes.

Q. On any of those occasions did the defendant ever accompany you in the bath room.

A. No.

Q. Did you on those occasions close the door as you used the bath room?

A. Yes.

Q. What happened on the evening of Thursday, October 11th?

A. I can't remember what happened. He went out to make a telephone call, I think.

Q. Did you have any conversation with him after he returned on that evening?

A. I can't remember who he telephoned. I think he telephoned his father.

Q. Did he tell you that when he had returned?

A. He told me he had made a telephone call. I can't remember what he told me whom he talked to.

Q. After he returned, did you and he stay in the apartment and carry on a conversation?

A. Of course.

Q. What was the topic of that conversation?

563 A. I can't remember.

Q. Do you remember the living room of this apartment?

Testimony of Mrs. Alice Speed Stoll

A. Yes.

Q. How many windows did it have?

A. Several, I think, possibly. I don't remember exactly.

Q. How many windows did the bedroom have?

A. One or two, I don't remember exactly which.

Q. Were those windows high from the floor or were they just reasonably high from the floor?

A. They were ordinary windows, I think.

Q. What was the view from the living room window?

A. The blinds were drawn on all occasions.

Q. What view, if any, was from the bed room window?

A. I never saw out of it. The blinds were drawn.

Q. What view, if any, was from the kitchen window or windows?

A. The blinds were drawn there, too.

Q. What view, if any, was from the bath room window?

A. The blinds were drawn.

Q. What was that you said?

A. I can't remember whether the blinds were drawn or whether the window was so that you could see out of it.

Q. Now you do remember there was a window in the bath room.

564 A. I think there was, yes.

Q. Your recollection is a little bit better now than it was a little bit ago.

A. I never said there wasn't a window. I just said I couldn't remember what the bath room looked like.

Q. As a matter of fact, wasn't there a window in that bathroom of the usual type bath room window, stained glass type of window?

A. I think so.

Q. And wasn't that window of the type that could be raised or lowered?

A. I don't know. You could probably raise it like any window, probably.

Q. And there was a shade that you could pull up or down?

A. Possibly. I don't recall.

Q. And while you were in this bath room, you were at

Testimony of Mrs. Alice Speed Stoll

liberty and inaccessible from this defendant?

A. No. He always sat on the sofa in the living room, right outside, could have heard any attempt I made to open that window.

Q. This kitchen opens out onto a little porch, does it not?

A. I don't know.

Q. You cooked and prepared meals in that
565 kitchen from day to day, did you not?

A. Yes, but the blinds were drawn.

Q. Did you see Mrs. Frances Robinsen when she came to that apartment on Tuesday?

A. I only saw her when she was in the house.

Q. From your location in the bed room could you not have seen her enter through that kitchen door?

A. I saw her when she was in the kitchen. I did not see her until she entered.

Q. You did not see her come into the kitchen?

A. I saw her in the kitchen.

Q. You knew that there was a porch that led from the kitchen of this apartment?

A. No. I don't know anything about the outside. It was dark when I came in.

Q. Did you ever hear footsteps or voices back there?

A. I think the milk man came once.

Q. Did he come regularly and daily?

A. I don't know. I think he left milk there once a day.

Q. Did he have any regular time to come or did he come at regular times?

A. I never saw him. I don't know.

Q. Not that you saw him, but did you hear him?

A. No, I don't think I did.

566 Q. To your best recollection then, the milk man came about every day?

A. Well, I know he left the milk there. I never saw him. I don't know what time he came or anything about it.

Q. What was to have prevented your going into the bath room on the occasions the milk man came and hollering out the window that you were a captive?

Testimony of Mrs. Alice Speed Stoll

A. Because I was never left in the room by myself.

Q. But you were not prohibited from going to the bath room at any time, were you, Mrs. Stoll?

A. Well, the milk man came in the morning when I was tied in bed, early in the morning.

Q. Who collected the garbage from those apartments?

A. I haven't any idea.

Q. Was it collected?

A. I don't know.

Q. Would you say that you never heard any garbage cans being shuffled around outside that apartment?

A. No, I never heard any.

Q. Isn't it true that the garbage can from the front apartment and the garbage can for this apartment No. 2 are kept and located, and were kept on that occasion, on the porch right below or beneath the bath room window?

A. I don't know anything about it because I
567 didn't know anything about the porch.

Q. You never exercised a woman's curiosity during all that time that you were in that apartment, to try to raise that bath room window and take a view of the surrounding premises?

A. No, I was scared to death. He was sitting on the sofa outside with a gun.

Q. But you were inside the bath room with the door closed.

A. I know, but if I made the slightest sound he would have been right there.

Q. But you could have locked that bath room door and locked him out?

A. Well, possibly so, but he could have run around outside.

Q. But that would not have prevented your outcry to the adjacent apartment or to the persons in the front apartment.

A. I didn't know anything about the adjacent apartments or who was in them, or anything about it.

Q. Well, did you want to get out of that apartment?

A. Of course I did.

Q. Wasn't it a good chance to take, to make an out-

Testimony of Mrs. Alice Speed Stoll

cry through that bath room window?

A. No, it certainly wasn't. I had been hit on
568 the head twice.

Q. Wasn't it reasonable to believe that if you had made an outcry, that somebody would have investigated it?

A. No. I didn't know whether anybody was anywhere near or not.

Q. And you did not take the trouble to raise the window and find out.

A. No. I didn't want to be shot. I had already been hit twice.

Q. You were behind this door, though.

A. I know, but he was right on the other side.

Q. Now I will ask you, Mrs. Stoll, even assuming that he was right on the other side of that door, if it were not possible for you to have stepped to the right of that door, in front of that linen closet, so that if he had shot through that door you would not have been in range of his fire?

A. I really don't know.

Q. You won't say.

A. I don't know, but I know one thing, I was in such a weakened condition at that time that I don't think I could have gotten through the window.

Q. Your voice could have gotten through, could it not?

A. Possibly my voice could have, but I didn't
569 know that anybody could have heard me if it had.

Q. At any rate, you never tried it.

A. No, I did not.

Q. Now, with reference to Thursday, October 11th, in the evening, what time did you retire on that occasion?

A. I really couldn't say.

Q. Is your recollection bad as to that?

A. I can't remember every day what happened every hour.

Q. What is your best judgment of the time you retired on that second night?

A. I haven't—I don't know.

Q. Was it early or late at night?

A. I really couldn't say.

Testimony of Mrs. Alice Speed Stoll

Q. Did you have a radio or clock in the room?

A. No.

Q. Did you or he have any time-piece?

A. No; I don't know whether he did; I didn't.

Q. You could tell, of course, from the rays of the sun whether it was day or night?

A. Yes.

570 Q. Mrs. Stoll, will you take this photograph, which purports to portray the sidewalk and the South side of the apartment in which you claim you were held, and part of the apartment to the South of that. Does that reasonably and truly represent the view toward the two buildings as you remember it when you were being taken into the rear of that apartment?

A. I told you that I had no idea of what the apartment looked like. It was dark.

Q. When you say "apartment" you refer now to the outside?

A. Yes.

Q. Now, what time of the day or night did you and Mrs. Robinson leave that apartment on Tuesday following the Wednesday that you went there?

A. Me and who? I never left the apartment.

The Court: You mean the day she was released?

Mr. Hogan: Yes, with Mrs. Frances Robinson.

A. You mean the day I was released?

Q. Yes?

A. What time did we leave?

Q. Yes?

A. About two o'clock.

Q. That was in the daytime?

A. Yes.

571 Q. And by what door, with reference to the rear door or the front door, of the apartment did you and Mrs. Robinson leave?

A. I think we left by the front door.

Q. I show you a photo that purports to portray the front door entrance and the court and outside windows of the apartment in which you were located.

A. Yes.

Testimony of Mrs. Alice Speed Stoll

Q. Does that fairly represent that situation?

A. I expect it does. I do not recall that very clearly.

Q. It looks about like you remember it, doesn't it?

A. I think so.

Mr. Hogan: I would like to show this photograph to the jury.

The Court: Let the stenographer identify it before you show it to the jury.

Mr. Hogan: I don't intend to introduce this now.

The Court: You can't show them to the jury unless you introduce them.

Mr. Hogan: All right. Let these photographs be marked Defendant's Exhibits Nos. 1, 2 and 3.

The Court: Members of the Jury, counsel advises me that this examination will probably continue for
572 some 30 or 40 minutes, so I think it advisable that we take a short recess now.

Do not discuss this case among yourselves or let anybody talk to you about it or in your presence.

There was a short recess, after which the following proceedings were had:

Cross-examination Continued by Mr. Hogan.

Mr. Hogan: If Your Honor please, I would like to introduce this first photograph as Defendant's Exhibit No. 1 in evidence.

(The photograph which had already been identified as Defendant's Exhibit No. 1 was handed to the Reporter and filed.)

The Court: Now if you have any other pictures that are going to be introduced, do that and let the jury look them over at the same time.

Q. I show you another photograph or view which purports to show the entry of the living room. Does that look like the interior of the living room of that apartment?

A. I think so.

Q. That shows that living room to have three windows, doesn't it?

A. Yes.

Testimony of Mrs. Alice Speed Stoll

Mr. Hogan: I would like to introduce that in
573 evidence as Defendant's Exhibit No. 2.

(The photograph which had already been identified as Defendant's Exhibit No. 2 was handed to the Reporter and filed.)

Q. Now I show you another view, it is not a complete part of the picture because some of the other conditions do not represent the same situation or purport to represent the same situation that existed in the bed room at the time in question, but I will show you what purports to represent the windows of that apartment of the bed room. Does that represent, accordingly as you remember it, the bed room windows?

A. Well, possibly, but the blinds were always down so I did not know what was outside the windows.

Q. Not with respect to the view outside of the windows, but with respect to the location and size of the windows. Does that truly represent those windows?

A. I think so.

Mr. Hogan: I now would like to introduce this as Defendant's Exhibit No. 3.

(The photograph which had already been identified as Defendant's Exhibit No. 3 was handed to the Reporter and filed with the record.)

Mr. Brown: We have no objection to that exhibit, except of course the blinds being always drawn, it would not show what was outside.

574 The Court: It may be introduced to show the location and size of the window rather than anything that might be seen from the window.

Mr. Brown: That's right.

Mr. Hogan: That's right.

The Court: The jury will consider it only in that respect.

Q. Mrs. Stoll, were you at any time ever restricted the use of the bath room?

A. No. I was allowed to go to the bath room as long as he sat opposite on the sofa.

Testimony of Mrs. Alice Speed Stoll

Q. When you were in there you had access to the wash basin and, I suppose, did use it?

A. Yes.

Q. And you turned the water on there?

A. Yes.

Q. And you had cause, I take it, to flush the toilet?

A. Yes.

Q. And you did do that?

A. Yes.

Q. That made noise, of course, by the running of the water and the flushing of the toilet?

A. Yes.

575 Q. Couldn't you have opened the windows during that process and the noise of the opening of the window not be detected by the defendant?

A. I doubt that very much.

Q. Did Mr. Robinson ever bring into the apartment any beer?

A. He did, on several occasions.

Q. What brand of beer was that?

A. I don't know.

Q. To refresh your recollection, was it not Patrick Henry brand?

A. I really couldn't say.

Q. Did you drink any of that on any occasion?

A. I did on several occasions. I had very little else to eat and I needed anything I could get to get a little strength.

Q. How many times would you say he brought beer into the apartment?

A. Perhaps once a day.

Q. How much would he bring in on each occasion?

A. I think he brought a bottle for himself, and I had a glass, usually.

Q. Would he bring two bottles, one for himself and one for you, and you participated in drinking part of it?

A. Yes.

Q. What type of coat did you have around you
576 when you left your home on Lime Kiln Road?

A. A blue and white checked tweed coat, with

Testimony of Mrs. Alice Speed Stoll

a cape.

Q. Did you take it to the apartment at Indianapolis?

A. Yes.

Q. What did you do with it after you got to Indianapolis at this apartment?

A. I kept it on all of the time—I slept in it.

Q. Did you ever put on any dress of anybody's?

A. Yes, he allowed me to put on one of Mrs. Robinson's dresses.

Q. Did you say you kept this coat on all the time and slept in it?

A. Other than the time I took it off in the bath room.

Q. All the time you were there?

A. I might have had the coat off after I had the dress on—I can't remember that.

Q. Did Mr. Robinson discuss with you during your stay in that apartment that he had worked for Mr. C. C. Stoll?

A. I think he did—but I can't remember.

Q. Did he say anything to you about Mr. Stoll having it in for him or prosecuting him?

A. I cannot recall whether he did or not.

577 Q. Well, isn't it true that he did tell you that?

A. No, I will not say that it is true.

Q. You just say that you do not recollect it?

A. No. I am sure he did not say that.

Q. Did he talk to you about having worked for Mr. C. C. Stoll, and that Mr. Stoll was blocking his efforts or had blocked his efforts to obtain employment?

A. I do not recall that.

Q. What was his discussion about Mr. C. C. Stoll?

A. I really can't remember what he said about Mr. C. C. Stoll.

Q. You only remember Mr. Stoll's name was brought into the conversation?

A. I can't be sure about that.

Q. What happened on Friday, October 12th?

A. That was the day that he telephoned his father and his father told him that it was known who he was, and that was the first time that I knew who he was.

Testimony of Mrs. Alice Speed Stoll

Q. Do you say that that was the first time that you ever knew what his name was or who he was?

A. Yes.

Q. Did he tell you from what State he had come?

A. Yes; that was when he told me that he had been to Vanderbilt University.

Q. And you were able to detect that he had a
578 southern tone of voice?

A. Yes.

Q. What else did he tell you on this Friday?

A. He told me something about having gone to Vanderbilt; and I believe he told me something about a robbery he had participated in.

Q. Did he discuss with you any fact about his family?

A. No; I cannot remember that he did.

Q. Did he tell you that he was married?

A. Yes; I knew he had a wife.

Q. Did he tell you that he had any children?

A. I do not remember.

Q. Did he leave the apartment other than to go and call his father on this October 12th or, rather, reported that he had gone and called his father?

A. I think he went and called his wife.

Q. Well did he tell you he had called his father before he told you that he had called his wife?

A. I think he did.

Q. Was he getting worried about anything?

A. Yes he was very much disturbed because he said the police were surrounding his father's house.

Q. How did he manifest his anxiety?

A. He was very angry. He said my family had
579 double-crossed him—that was his words—because they had called the police in.

Q. When he got very angry, as you say, what manifestation came on his face that readily told you that he was in an angry condition?

A. He was angry as anybody else would be angry.

Q. Did a change appear in his eyes or face?

A. No.

Q. Did he beat on the table or kick the furniture

Testimony of Mrs. Alice Speed Stoll

around.

A. No.

Q. In other words he just got mad or angry?

A. Yes. He used bad language.

Q. Now on Friday night, do you recall what time you retired?

A. No; I do not.

Q. Do you recall anything else that happened on Friday October 12th?

A. No I don't, other than those telephone calls. Yes, I think I wrote to Berry. I had been urging him to let me get in contact with my family in some way, and he allowed me to write a note to Berry; and he went out and came back and had not mailed it.

Q. Now you wrote a letter to Miss McHenry and a letter which you termed "Dear Mr. Intermediary"?

580 A. Yes.

Q. Did you write any other letters than those 3?

A. That was the day I wrote to the intermediary. I think I said that before.

Q. That was Friday?

Mr. Brown: Whatever date the letter shows. What is the date of the intermediary letter?

Witness: It was Saturday.

The Court: October 13th was the date of the letter to the intermediary. The 14th was the date of the letter to Berry.

Q. So you wrote 2 letters one day, that is the 14th of October, one to "Dear Scat," your friend Miss McHenry, and one to your husband, Mr. Berry Stoll; and the day previous to that, or Saturday, October 13th, you wrote a letter addressed to "Dear Mr. Intermediary"?

A. That is right, and that was the same day I think that I wrote the letter to Berry that he did not mail.

Q. So instead of writing 2 letters on the 14th, you wrote 2 on the 13th. Is that your idea about it?

A. Well I wrote 2 letters on the 14th, too.

The Court: She wrote 4 letters altogether. She wrote 2 on the 13th and 2 on the 14th, and one on the 13th was not mailed so far as you knew?

Testimony of Mrs. Alice Speed Stoll

Witness: That is right.

581 Q. The one to your husband on the 13th was not mailed?

A. That is right.

Q. Now, what happened on Saturday?

A. I said that was the day that I wrote to the intermediary.

Q. Other than the writing of the letter?

A. I can't remember.

Q. I suppose he went and got provisions?

A. Yes; and telephoned. That went on every day.

Q. And got beer, I suppose?

A. I guess so—I don't recall.

Q. And what time did you or he retire on Saturday evening?

A. I don't know.

Q. Was it late or was it early in the evening?

A. I really don't know. It was after he made his telephone calls.

Q. He at no time ever molested you, as you have said?

A. No.

Q. And after that first conversation that you had with him about that, he did not talk to you any more about that?

A. No.

582 Q. Nor you to him?

A. No.

Q. Was his conduct that of a gentleman during his stay there?

A. Yes, I would say that it was.

Q. Did anything unusual occur on Sunday?

A. Well no, I don't think so. That was the day that he had the telephone conversation with Miss McHenry.

Q. And during the time that you were there and he was in the apartment, you had discussions with him about various matters?

A. The progress of the kidnapping.

Q. Was that the chief topic of conversation?

A. Yes.

Q. Did anything unusual happen on Monday?

Testimony of Mrs. Alice Speed Stoll

A. That was the day that we were expecting the ransom money to arrive.

Q. Well, did it arrive on that day?

A. No; not until the next day.

Q. That was the next day, the Tuesday, when Mrs. Robinson arrived there?

A. Yes.

Q. She got there about 9 in the morning, I believe?

A. Yes.

Q. After she came there and entered that apartment, what were her first words?

A. I think she said, "Hurry and get away. They are following you."

Q. Did you say anything to her or did she address any remark to you?

A. No; I think she said to me, "How are you?"

Q. Did you answer her?

A. No.

Q. And what was your condition at that time?

A. I was tied in bed.

Q. Didn't Mrs. Robinson offer to untie you?

A. No.

Q. When she got there?

A. No.

Q. Do you state that that is not true?

A. That is not true.

Q. She did untie you, didn't she?

A. No.

Q. She never did?

A. Only after he had left the apartment on the day that I was released.

Q. Now something was said about a 24-hour interval. Will you explain what you meant by that?

A. Yes; he threatened to kill both of us if we did not stay there for 24 hours when he left the apartment.

584 Q. I will ask you, Mrs. Stoll, if it isn't true that you were perfectly willing for him to have a 24-hour head start?

A. I certainly was not.

Q. I will ask you if it isn't true that you were entirely

Testimony of Mrs. Alice Speed Stoll

willing for him to go and get started, and that that met with your approval?

A. It certainly was not.

Q. I will ask you if you did ~~not~~ express a feeling of sorrow for him?

A. I did not.

Q. Did Mrs. Robinson, Mrs. Frances Robinson, get you any food during that day?

A. Yes.

Q. More times than one or just on that one occasion?

A. Once.

Q. When was that?

A. After he had left the apartment.

Q. And what did that consist of?

A. Sandwiches and a bottle of beer.

Q. To refresh your recollection I will ask you if she did not get you a glass of milk before she went and got you the sandwiches?

A. Yes.

585 Q. And you drank that?

A. Yes.

Q. That was about 11 o'clock in the morning?

A. Yes.

Q. What time did you have the sandwiches and the beer?

A. I don't know—about one, I guess.

Q. How many sandwiches did you have, and how many bottles of beer did you have?

A. One glass of beer and one sandwich is all I can recall.

Q. I will ask you if it is not true that you ate one sandwich and drank 2 bottles of beer?

A. I don't think so. I don't think I ever drank 2 bottles of beer in my life at one time.

Q. You testified previously in this Court, in October 1935, didn't you?

A. Yes.

Q. I will ask you if this question was not asked you on that occasion, the occasion of this former trial:

Testimony of Mrs. Alice Speed Stoll

“Didn’t she (referring to Mrs. Frances Robinson) go out and get two sandwiches and 4 bottles of beer; and didn’t you eat one of the sandwiches and drink 2 of the bottles of beer?”

And didn’t you answer:

586 “Yes”?

A. I don’t know. I can’t recall it. I was in such a weakened state then that I probably did.

Q. The question isn’t whether you ate them or didn’t, but it is whether you testified to that in this court, or to that effect. Wasn’t that question asked you and didn’t you make that answer?

A. Maybe I did. I don’t recall.

Q. Now, after you left the apartment with Mrs. Frances Robinson on Tuesday, October 16th, where did you and she go?

A. We went to the drug store and she called a taxicab.

Q. And where was that drug store located?

A. About a block away, on the corner.

Q. How did you get to that drug store?

A. We walked.

Q. Did you carry anything?

A. No.

Q. Did Mrs. Frances Robinson carry anything?

A. She had the money that was given to her. I don’t recall her carrying anything else.

Q. Didn’t she have a radio?

A. No.

587 Q. What else did she have?

A. I don’t remember that she had anything except she had her pocketbook.

Q. Didn’t she have a paring knife, or something?

A. Yes; I think she did have a knife.

Q. And didn’t she likewise have a radio?

A. No.

Q. You distinctly say she did not?

A. Yes.

Testimony of Mrs. Alice Speed Stoll

Q. What did she do at the drug store?

A. Mrs. Robinson called a taxicab.

Q. Did you have anything to eat in there?

A. No.

Q. Did anything else transpire there at the drug store?

A. No.

Q. Did you buy any articles in the drug store?

A. No.

Q. Any medicine?

A. No.

Q. Or did she?

A. I don't think so.

Q. She merely placed a phone call?

A. Yes.

Q. And you had walked from the apartment to
588 the drug store?

A. Yes.

Q. And when the taxicab came you were taken in the cab to the home of the Rev. Clegg?

A. That is right.

Q. How long did you stay at the home of the Rev. Clegg?

A. Not long—long enough for him to get ready to drive me to Louisville.

Q. Let's retrace just a minute from the time just before you left the apartment and the time that you were with Mrs. Frances Robinson. Did you and she have any conversation while you were there?

A. I think we did.

Q. What were you talking about?

A. I really can't remember.

Q. I will ask you if you were not just talking, as you termed it once, about trivial matters?

A. I think so.

Q. When you got to Rev. Clegg's he was not immediately there, was he?

A. No, I think he was in the house.

Q. To refresh your recollection, I will ask you if it was not necessary for Mrs. Clegg to locate him in the City?

Testimony of Mrs. Alice Speed Stoll

589 A. Well I am not sure.

Q. You don't know whether he was or was not there?

A. No; I do not.

Q. Was it not necessary for her to locate him so that he might use his car in returning you to Louisville?

A. Yes.

Q. Did you phone anybody from the Rev. Clegg's?

A. Yes, I phoned my friend, Miss McHenry, to tell her I was coming home.

Q. And how long, what period of time, did you spend in the Clegg home?

A. A half hour or so.

Q. And then you started on to Louisville?

A. Yes.

Q. Mrs. Frances Robinson was with you?

A. Yes.

Q. And Mr. and Mrs. Clegg?

A. Yes.

Q. While you were in the Clegg residence, did anything unusual occur there?

A. Yes; somebody, a man, was out on the front lawn and I ran in the back—I was scared to death. I thought I was still being followed.

590 Q. What happened to the coat that you had used and taken with you from Louisville to Indianapolis?

A. I had it on.

Q. Was that a tweed coat?

A. Yes.

Q. Of a bright color?

A. Of blue and white check.

Q. Easily noticeable?

A. Yes, but Mrs. Clegg lent me one of her coats to put on in addition, as it was cold.

Q. I understood you to say that this tweed coat was a heavy coat?

A. Well not very heavy.

Q. Well it was not very light?

A. It was a spring or fall weight.

Testimony of Mrs. Alice Speed Stoll

Q. I will ask you if the reason you changed coats was because you did not want to be detected and that you might allow the defendant to get along and not be apprehended?

A. No, that is not true. It was very cold, and I was feeling very badly and I asked Mrs. Clegg if I might use one of her coats. It was getting along late in the afternoon then.

Q. You deny that you made a change in coats to divert the attention from you?

A. I do.

591 Q. Did you use the phone in the drug store?

A. No.

Q. Did you use the phone in the Rev. Clegg's home to call anybody other than Miss McHenry?

A. No.

Q. Did you try to use the phone in the drug store to notify the FBI or the Indianapolis authorities?

A. I did not.

Q. Did you do that in the home of the Rev. Clegg?

A. No.

Q. You had access to the phone in the drug store and in the Clegg home?

A. Yes.

Q. But you did not do that?

A. No. I was very scared was the reason I didn't. I was sure—I was led to believe that there were two confederates that were following me. I thought the kidnapper was still close by and a man had appeared on the lawn of Mrs. Clegg's house while I was there. I thought it was either he or one of his confederates, and I was thoroughly frightened at that time.

Q. Well a man had not appeared on the lawn when you were at the drug store?

A. No. I was anxious to get to some member of my family as soon as possible. I might also add that I 592 knew nothing of Mrs. Robinson. I did not know whether she had a gun on her.

Q. Well now she had released you, hadn't she?

A. Yes, but still she had brought the ransom money.

Testimony of Mrs. Alice Speed Stoll

Q. And she had gone out and brought you beer and you had discussed the topics of the day with her?

A. That's true but that didn't mean anything.

Q. She had not threatened you or anything?

A. No she didn't but I didn't know how much she was working with her husband.

Q. And I believe you took up for her when the FBI arrested her at Scottsburg, Indiana?

A. Yes, I was grateful to her because she had unbound me there and released me.

Q. And you were so grateful to her that you refused to proceed to Louisville until she was put back in the car in which you were?

A. Perhaps. I was so afraid of being left in that closet that I was grateful to Mrs. Robinson for releasing me.

Q. Isn't it a fact that you knew he was gone and had left there?

A. No; I did not.

593 Q. And he came back and told you and Mrs. Robinson that he was gone?

A. Yes, and he came back.

Q. I mean after he left the first time he came back and didn't come back any more?

A. He came back about a half hour later.

Q. And you had reason to believe that he was gone and would not be back?

A. No I did not. I imagined he was close by.

Q. Were you living in Louisville or Jefferson County in May and June in the year 1931?

A. Yes.

Q. Now you say that you had never seen or known the defendant before this occasion?

A. That is true.

Q. I will ask you if it isn't true that you knew the defendant at the time he was employed at the Second and Broadway filling station at the Stoll Oil Refining Company?

A. No; I didn't.

Q. I will ask you if on occasions when you would go

Testimony of Mrs. Alice Speed Stoll

there to have your car serviced if he isn't the one that on some of those occasions serviced your car and talked to you?

A. No. I do not recall of ever having seen him before.

594 Q. And I will ask you if on another occasion you did not see him and talked to him at the River Road Station or plant of the Stoll Oil Refining Company during the year 1931, during the time that he was employed here at Louisville?

A. I do not ever recall having seen him before.

Q. You deny emphatically ever having seen him or talked to him before this occasion?

A. I certainly do.

Mr. Hogan: That is all.

The further proceedings in this case was adjourned until Thursday morning, at 9:30 a. m., December 2, 1943.

595 Convened pursuant to adjournment at 9:30 a. m. Thursday, December 2nd, 1943, and proceeded with the trial as follows:

The Court: If there are any witnesses in the court room, please retire to the hall and remain until you are called. The witnesses are not to be in the court room while the trial is going on. Also keep in mind that while the witness is on the stand, people will not be permitted to enter and leave by the main door. They can do so between witnesses or during recess, but while a witness is testifying we do not want the running in and out of the court room.

Are you ready to proceed?

Mr. Brown: Yes. Dr. Frazier.

DR. HARRY S. FRAZIER called as a witness in behalf of the Government, was duly sworn by the Clerk and examined and testified as follows:

Q. State your name to the jury.

A. Harry S. Frazier.

Q. What is your business or profession?

Testimony of Dr. Harry S. Frazier

A. Doctor of medicine.

Q. Of what school or colleges, or universities, are you a graduate?

A. I graduated and received my degree of medicine from the University of Louisville in 1926.

596 Q. Since 1926, have you continuously followed your profession?

A. Yes, I have.

Q. Here in the City of Louisville?

A. In Louisville.

Q. During the following of your profession, have you had occasion to treat wounds of various kinds, Doctor?

A. Yes, naturally.

Q. On October 16th, 1934, did you have occasion to examine Mrs. Alice Stoll?

A. I did.

Q. Were you her regular family physician?

A. No, I had not been.

Q. Where did you see her on October 16th, 1934?

A. I saw her at her home, at about 9:00 o'clock that night.

Q. Is that the home on Lime Kiln Road?

A. On Lime Kiln Road.

Q. At that time did you examine Mrs. Stoll?

A. I examined Mrs. Stoll, and it was very shortly after her return. I found her—

Mr. Hogan: I object to anything that the witness may offer or say in regard to what condition he found her in, based upon my objection as of yesterday, the same point.

597 The Court: All right. The objection is overruled. Exception.

Q. All right, just tell how you found her there.

A. Mrs. Stoll was utterly worn out, she was pale, bedraggled, had circles under her eyes, she had sores across her lips with some remnant of the dirt that adhesive plaster will leave at its margins, her blood pressure was 148 over 90, and her pulse was rapid, 96.

Q. Stop there and explain to the jury what that blood pressure rate means.

Testimony of Dr. Harry S. Frazier

A. Well, that simply means that, though outwardly calm, she was under a terrific nervous tension and that was its reaction, just to boost up her blood pressure and accelerate her pulse rate. She was not trembling, she had no difficulty in expressing herself, but she did have, first, a rounded swelling on her right temple which was an inch and a half in diameter. It began just under her hair line and covered pretty much the entire temple. This place was not discolored as the usual bruise is, but was quite tender to touch and quite hard, and I felt that that represented bleeding under the skin that covers the bone, the periosteum, and the mere fact that it did not discolor and was so long absorbing, going down, made me believe that perhaps there the actual integrity of the bone had been interrupted. The other injury was on the back of her head a little above and behind the ear, and that was covered up by a clot of blood which had matted the hair also, and some red stuff was also on it which Mrs. Stoll said was mereurochrome.

Mr. Hogan: That's objected to.

The Court: Objection sustained to what Mrs. Stoll said. The jury will not consider that part of the testimony.

A. (Continuing) This cut in the scalp was an inch long. It was partially healed. The edges were remarkable to say, in apposition, that is, they were together. It was the sort of cut that should have had at least two stitches taken in it to be sure of good results, but, fortunately, the wound had not gaped and healing was in process. All that was necessary to do was to clean off the blood with soap and water and peroxide, and then I covered that with flexible collodion, the old fashioned new skin.

Q. What, in your opinion, Doctor, had caused the wounds that you have described?

Mr. Hogan: Now that's objected to.

Q. Or what was capable of causing the wounds that you have described?

Mr. Hogan: That's objected to.

The Court: I believe the objection should be sustained. I don't think that that's important.

Mr. Hogan: Without waiving the objection heretofore

Testimony of Dr. Harry S. Frazier

599 made, I would like then to ask the Doctor—

Mr. Brown: Wait a minute. I am not through yet.

Mr. Hogan: You are not through?

Mr. Brown: No.

Mr. Hogan: I misunderstood you, Mr. Brown.

Q. This you found to be her condition on October 16th, 1934. When next did you see Mrs. Stoll?

A. The next day, the following day.

Q. What was her condition at that time?

A. Well, as we say, she had reacted from her tension and pressure of the evening before. She was relaxed but was completely exhausted. Her blood pressure had dropped to sub-normal level at that time, 102, and she was rather lethargic and inclined to want to be quiet.

Q. Now, with reference to the lump on her head, had that been absorbed at that time, or, if it had not been, how long did it take that lump to be absorbed?

A. It had not entirely been absorbed at the end of the week, but it had diminished in size by more than half and was less tender, and at the end of that week I left the city for a week or so and did not see her after that.

Q. Now, Doctor, do not answer this question until we get a ruling on it, if there is an exception made to it. In your opinion, could these wounds that you have testified about been caused by blows on her head by a blunt instrument?

600 Mr. Hogan: Objection.

The Court: Objection sustained.

Mr. Brown: You may ask him.

Mr. Hogan: Without waiving any objection or without prejudice to the right of this defendant to insist, as we have formerly insisted, that this type of evidence is incompetent, I would like to ask the witness some questions.

The Court: You do not waive your objection by cross-examining the witness.

Cross-examination by Mr. Hogan.

Q. Doctor, you spoke of an increased blood pressure. There are many things that will cause the pressure of

Testimony of Dr. Harry S. Frazier

blood in a person to rise, are there not?

A. Not in a normal person.

Q. If you attend a horse race and have a bet on a horse, your pressure will rise considerably during that moment of tension while the race is being run, will it not?

A. Only if one were an inveterate gambler and risking great stakes or something to make great nervous tension.

Q. You do say that that will increase the pressure?

A. Nervous tension, anxiety.

Q. Excitement at a football game in a tense moment will increase the pressure, will it not?

A. Conceivably so.

601 Q. Likewise at a baseball game, it will increase the pressure, in the excitement, will it not?

A. I have.

Q. Have you ever attended a baseball game?

A. Yes, but I have never had my blood pressure taken.

Q. I am not asking you personally, I am asking you professionally, you qualified as an expert, if it is not true that any kind of excitement will have a tendency and does increase the pressure.

A. I think it has got to be more vital, more personal in anxiety, than observing sports and athletics.

Q. Haven't you at times known of cases where people have been known to drop dead at race tracks and ball games, from the excitement?

A. I have heard of such cases.

Q. That is caused by an increase in the pressure, is it not, Doctor?

A. Yes, but people have dropped dead in bed also, at least have been found dead in bed.

Q. But when they drop dead, either at a sports event or in bed, their pressure rises, does it not?

A. Not necessarily.

Q. But it does enter into the cause of death, does it not?

A. Not necessarily. There are many phenomena
602 that could do that.

Q. You mean that a person expires without any variation in the pressure?

Testimony of Dr. Harry S. Frazier

A. Yes. Many of our deaths are from arteriosclerosis with final complete clogging of an arteriosclerotic vessel. Most of our sudden deaths are of that sort, which may occur in the vessels of the heart or of the brain.

Q. Let's confine our theory to cases of death caused from excitement of anxiety. Now, in those types of cases, is it not a fact that the pressure rises?

A. Yes, I believe so.

Mr. Hogan: That's all, Doctor.

Mr. Brown: Doctor, in line with the questions asked you by counsel for the defendant, what, in your opinion, would be the effect on the blood pressure of two blows on the head where you have a forcible removing from a home, absence in a strange place for a period of six days, where you had been held in a closet, tied to a chair, gagged, with adhesive placed on your mouth, slept tied to a bed, attached by a cord to a man that you had never seen before—in your opinion, would such a condition, if true, have a tendency to cause the blood pressure to rise or to fall?

Mr. Hogan: Just a minute, Doctor. Your Honor, please, that's objected to because the hypothesis is
603 based upon false premises.

The Court: Which one of those facts that have been assumed to be existing do you think has not been shown by the evidence?

Mr. Hogan: The hypothesis that she was all of the six days confined in a closet or tied to the bed.

The Court: Eliminate that. With that fact eliminated, Doctor.

Mr. Brown: Just placed there part of the time.

A. Yes, indeed. It is bound to affect both the blood pressure and the heart rate.

Mr. Brown: That's all.

Mr. Hogan: That's all, Doctor.

WILLIAM MARSHALL BULLITT called as a witness in behalf of the Government, was first duly sworn by the Clerk, examined and testified as follows:

Testimony of William Marshall Bullitt

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. William Marshall Bullitt.

Q. Where do you live, Mr. Bullitt?

A. Oxmoor, Route 6, Jefferson County.

Q. Here in the County of Jefferson, State of Kentucky?

A. Yes.

604 Q. Are you a practicing lawyer here in the City of Louisville?

A. Yes.

Q. On October 10th, 1934, did you receive a telephone call relating to the kidnapping of Mrs. Alice Stoll?

Mr. Hogan: That's objected to. That's a leading question.

The Court: The question is leading, but we will take an awful long time if we don't lead a little where it is not prejudicial. You think that is prejudicial to your client in any way?

Mr. Hogan: Yes.

The Court: All right, then, Mr. Brown.

Q. On October 10th, 1934, about the hour of 5:45 pm, did you receive a telephone call from anyone?

A. Yes.

Q. As a result of that telephone call, what actions did you take, Mr. Bullitt?

A. I telephoned to a man named Malley whom I had known for many years as the head of the Secret Service, of the counterfeiting part of the Government, of the Treasury Department, told him—

Mr. Hogan: That's objected to. That's hearsay.

Q. All right—as a result of information, did you communicate with any Department of Justice agents?

605 A. I did.

Q. After you had gotten in touch with the agents of the Department of Justice, what did you do, Mr. Bullitt?

A. I went from my office at the corner of Fourth and Market in my automobile, to the corner of Third—I said Market, it is really Jefferson, Fourth and Jefferson, Fifth and Jefferson—I went to the side entrance of the Tyler

Testimony of William Marshall Bullitt

Hotel on Third Street, and there three men, in accordance with the appointment I made, were there, a man named Wynn, a man named Kerr, and I have forgotten the third man's name, and they identified them as FBI. One of them got in my car, that was Wynn, two others followed in their own car, and I led the way and motored then out Main Street or Market Street, out the River Road, to the Lime Kiln Lane, turned in, I knew where the Stolls lived. I went to the gate that leads up that hill, and then I went through that gate and the other one followed me, and we went up to the Stoll house.

Q. After you reached the home of Mr. Berry Stoll, did you go into the house?

A. Yes, immediately.

Q. What portion of the house did you first visit, Mr. Bullitt?

A. Well, I think I stood there in a little bit of a hall for a minute or two, and then I went right up the little stairway that's right within a foot or two, two or **606** three feet, of the front door.

Q. When you reached the top of that stair, did you go into a bed room?

A. Well, there were two bedrooms there—three, in fact. I went into two of them right away.

Q. All right, with reference to the guest room, will you tell the jury what you found to be the condition and what you found in that guest room?

Mr. Hogan: That's objected to unless it is shown that there had been any disturbance of that guest room.

Mr. Brown: We, of course, can show that.

The Court: All right.

Mr. Hogan: Of course, if it isn't connected up, we will renew our objection.

The Court: All right.

Q. Go ahead, Mr. Bullitt. What did you find with reference to the condition of that guest room?

A. By the guest room, if you mean the room that is on the lefthand side when you get to the top of the stairway, which is really on the Northeast corner of the house—that's the room you are talking about. That room is a

Testimony of William Marshall Bullitt

moderately size room. There was a bed. I think it was a single bed. It wasn't a big double bed, I would say a single bed. It was covered with a pink coverlet, sort of like a quilt, pink. On it were two big blood stains.

607 One was about the size of a large plate. That was about three quarters of the way, I would say, down toward the foot of the bed. There was a big, very distinct, very different from the color of the pink coverlet, about as big as a big plate, and then there were splotches of blood around the edges, but that middle one was almost exactly round and equivalent to a pool of blood although I don't think it was wet in the sense of being a quarter of an inch thick or a tenth of an inch thick, but it was soaked down into it. Then about eight or nine inches away from that, further over on the side of the bed, was another one, about the size of a saucer. It was about that big, very much smaller, but about that big, as big as an ordinary teacup saucer, and that had the same kind of blood stain, and then there were scattered splotches out on the edges of it.

Q. After you had examined this room as you have testified to, did you return to the lower part of the house?

A. Not immediately. Not immediately.

Q. Some time thereafter did you return to the lower part of the house?

A. Oh, yes. Oh, yes.

Q. At that time, you, in company with other persons and certain agents of the Federal Bureau of Investigation and certain Louisville police officers, did you see a note of any kind?

608 Mr. Hogan: That's objected to. He is telling the witness what his testimony should be.

The Court: The question is leading.

Q. After you returned to the lower part of the house—

Mr. Hogan: I suggest that the witness be asked to tell what he did there.

Mr. Brown: I will ask my questions, if you object to them and the objection is sustained, I will ask another one.

Mr. Hogan: If they are leading, I'll guarantee you that I will object to them.

Q. Now Mr. Bullitt, after you returned to the lower

Testimony of William Marshall Bullitt

part of the house, was anything seen by you?

A. Yes.

Q. What, at that time, did you see?

A. I went into the room at the left of the entrance, which was apparently the dining room, and there was a table, a dining room table, it wasn't round, but it was rather rectangular or oval in shape, not very wide, but just an ordinary dining room table, and in that room, as I remember it, were two police officers in uniform, the city police, and there was one or two, maybe all three, of these F.B.I. men that came out there with me, that I took out, and there they were shown a typewritten sheet. Of
609 course, it has been nine years ago, but as I remember it, it was a typewritten sheet about the size of an ordinary typewritten letterhead or maybe a little longer, may have been the legal size, I don't remember, just a sheet, and I remember very well the police officer had it in his hand, it wasn't an FBI man. He held it in the corner like that, didn't want to get any fingers on it of anybody, and he held it up, and I read, not all of it, I remember that I looked at it and read it, it was in black typewriter with a lot of red typewriter letters scattered through it. It was part red and part black.

Q. I'll show you this document, and ask you to examine that and tell the—

A. (Interrupting) That's it. It was legal size. I couldn't remember whether it was letterhead or legal size. That looks like the exact paper exactly, and I remember the envelope. I forgot to mention that there was an envelope that looked just like that, and I did not read one part of it, I remember that.

Mr. Brown: I would like to have this marked for identification and we will introduce it through another witness. That consists of the envelope and the two typewritten documents.

(The document and envelope referred to were handed to the reporter and marked for identification Government Exhibit No. 33.)

Testimony of William Marshall Bullitt

610

Cross-examination by Mr. Hogan.

Q. Mr. Bullitt, who else besides the one, two or three FBI Agents and the two city police were in that residence on the occasion of your visit?

A. I think Mr. and Mrs. Speed, I know, were both there.

Q. Anybody else?

A. Just a minute—I am getting pretty old, you know.

Q. Did you see anybody else there?

A. Wait a minute, I want to be sure that I hear everything that you say.

Q. Well have you got your battery all charged up there now?

A. Yes. I am an old and broken man, and I want to be sure that I hear everything you say.

Q. Who else besides those you have mentioned and Mr. and Mrs. Speed were in that house?

A. Well, there was a girl—quite a small girl—a woman, I mean, who looked like she was 22 or 23 years old. She might have been 24, 25 or 26, I don't know. She was one of the servants.

Q. Was Mr. Berry Stoll there?

A. Yes, I think he was. I am not sure but I think he was. That has been nine years ago—I think he was but I really don't know for sure whether he was or not. I have no photographic recollection of seeing him. I am not at all sure he was there, but I think he was.

Q. You did not read this paper and you don't know what was in it?

A. Yes, I read a little of it, but there was one part of it I did not read.

Q. You say one page of it, I believe you stated?

A. Well it was that paper that I have identified. As near as I can tell, that was the paper. It may have been written on both sides, but I have forgotten. I have not seen it from that day to this. I have not read any testimony about it; I know nothing at all about it except my recollection.

Q. Did you see one or two pages there?

Testimony of William Marshall Bullitt

A. I only saw one. The fellow held it up and all I saw was one page. So far as I knew it was only one page. He just held up a sheet like this and didn't want anybody to touch it. I think he may have laid it this way on the table, and I am near-sighted and I have to change my glasses when I read anything close, like reading, and so I just glanced at it and I know there was some part of it I did not read.

Q. But you are quite confident that you did not
 612 see but one page?

A. No, I didn't say that. I said I read that part of the paper that was hung up, but there was one part I did not read.

Q. Well did they exhibit to you one page or was it two pages?

A. So far as I remember it was just that one sheet of paper. I didn't know there were two pages, and I didn't know—I don't know. They just held up something in front me, and whether I read the reverse side of it, I don't remember. I just read it, part of it, and part of it I did not read.

Mr. Hogan: That is all.

MRS. ANN WOOLET was called as a witness for the government after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Mrs. Ann Woolet.

Q. Where do you live?

A. 326 North 33d street, Louisville Kentucky.

Q. In October 1934 where were you employed?

613 A. Mr. Berry V. Stoll's home.

Q. How long had you been employed there prior to that time?

A. About 2' years.

Q. And in what capacity were you employed?

Testimony of Mrs. Ann Woollet

A. As a maid.

Q. Where was your husband employed at that time?

A. Mr. Stoll's.

Q. Where was the Stoll residence?

A. On Lime Kiln Lane.

Q. Here near Louisville, Kentucky?

A. Yes.

Q. On October 10, 1934, were you working there at the Stoll residence?

A. I was.

Q. Were you there in the afternoon of October 10th?

A. I was.

Q. Was your husband there?

A. He was not. It was his day off.

Q. What day of the week was that?

A. Wednesday.

Q. Was that always his day off?

A. Yes. Very seldom we broke the rule.

Q. On the afternoon of October 10th was Mrs. 614 Stoll at home?

A. Yes.

Q. Was there anyone there working, other than yourself?

A. There was a negro man out on the place.

Q. Did anyone come to the front door of the Stoll residence in the afternoon of October 10th?

A. Yes.

Q. Did you answer the door?

A. I did.

Q. What conversation, if any, did you have with the person who knocked on that door?

A. He asked me—he came to look at the telephones—he was supposed to have been a telephone man—

Q. (Interrupting) How did you know that he was a telephone man?

A. Well he said he came to check our telephones.

Q. How many telephones were in that house?

A. Two.

Q. Had you had any trouble with those phones?

A. Yes.

Testimony of Mrs. Ann Woollet

Q. Had any telephone man been there?

A. Yes, either that day or the day before.

Q. Now when this person came to the front door do you recall what conversation you had?

615 A. Well he asked me—he repeated a telephone number and asked me if that was the number, I believe it was East 2941, and he wanted to know if that was the number and I said yes.

Q. Was the telephone number that he repeated the telephone number of the Stoll residence?

A. Yes.

Q. And after he said that, did you admit him?

A. I did.

Q. About what time of the afternoon was that?

A. About 3 o'clock.

Q. What did he do after he entered the Stoll residence?

A. He wanted to know if we had an extension, and I told him that we did; and then he wanted to know if I thought Mrs. Stoll would approve of the dial system and I told him I didn't know.

Q. The dial system?

A. Yes.

Q. Was there a telephone on the first floor of the Stoll residence?

A. Yes; just as you enter.

Q. Just inside the front door?

A. Yes.

616 Q. Where is that telephone with reference to the stairs leading upstairs?

A. The stairs are right there, too; to the right of the telephone.

Q. Tell the jury whether or not this man worked around, or fooled around the telephone box there?

A. Yes; he did.

Q. How long did he work there?

A. Several minutes.

Q. Did he or not engage you in further conversation?

A. Not right there. I went downstairs.

Q. To the basement?

A. Yes.

Testimony of Mrs. Ann Woollet

Q. How long were you gone, if you remember?

A. Just a few minutes.

Q. Later, did he engage you in conversation?

A. Yes, he did.

Q. With reference to what?

A. Well he wanted to know whom she married; he asked me if she was Mrs. Speed's daughter and who she married. And he wanted to know if it was Berry Stoll.

Q. Did you answer those questions?

A. Yes.

Q. Was there any conversation with reference to
617 to a possible telephone in the garage?

A. Yes.

Q. What was that conversation?

A. He wanted to know if there were any other telephones in any other buildings or if there was any other help, possibly a chauffeur or something like that.

Q. Did he ask about a chauffeur?

A. Yes, he did.

Q. What did you tell him?

A. I said we didn't have any.

Q. And did he ask you about any persons working on the farm?

A. Yes, he did. He wanted to be very sure if anyone else was there.

Q. What did you tell him with reference to persons working there?

A. I told him there was a colored man there.

Q. Did you tell him what time that colored man—did you or not tell him what time that colored man—

Mr. Hogan (Interrupting): I object to that because it is leading.

The Court: Objection sustained.

Q. Was there any conversation with reference to the time that colored man left the Stoll farm?

618 Mr. Hogan: Now that is just another way of course. The proper way to do is to ask what conversation took place.

The Court: Well of course that is the proper way. Of course she might get off talking about something else that

Testimony of Mrs. Ann Woollet

had no bearing on the case. I don't see how she could possibly prejudice your client, but if you insist on it we will go through the formula. Go ahead, Mr. Inman.

Q. I believe you stated that there was conversation about the colored man?

A. Yes.

The Court: Now what was that conversation?

Mr. Hogan: That is what I want—what was the conversation.

A. As to the time the man left.

Q. All right. What did he say, and what did you say?

A. I told him what time he left—about four o'clock was his regular habit of leaving.

Q. Did this man who was working on the telephone leave the house at any time?

A. Well he went out to the garage. He seemed to be checking the wires.

Q. Was he at any time in the basement of that house?

619 A. Yes. He looked at the box down there and inspected the telephone box.

Q. Now was there any conversation between you and that man concerning an extension on the second floor?

A. Yes; he wanted to know about the extension upstairs.

Q. What did you tell him?

A. I told him we had one up there.

Q. Was there any further conversation about that?

A. Well he wanted to see it and I went upstairs and asked Mrs. Stoll about this dial system that he wanted to know about and I told her that he also wanted to see the phone, and she went into another room.

Q. Where was Mrs. Stoll during this time?

A. Well she was in the front room where this phone was at the time I went up.

Q. Is that a front room? Is that upstairs?

A. Yes, front bed room.

Q. And the extension was in that same room?

A. Yes.

Q. What did Mrs. Stoll do or where did she go after

Testimony of Mrs. Ann Woollet

you went up and talked to her?

A. Well she went into the guest room.

Q. Where was the guest room with reference to the head of the stairs?

620 A. Just at the head of the stairs.

Q. To the right or to the left?

A. To the left.

Q. After Mrs. Stoll moved to the guest room, what did you do? Where did you go?

A. I went back to the basement.

Q. Was there any other request made of you by this man who was working on the telephone?

A. Yes.

Q. What was that?

A. Well I overheard him—he was supposed to have been talking over the telephone. He said “I have to have help but maybe I can get the maid.” And then he asked me if I would go upstairs and do something to that telephone in the front bed room. And with that he walked to the telephone and was supposing to do something to it before I did.

Q. What room were you then in?

A. In the front bed room where the extension phone is.

Q. On the first or second floor?

A. On the second floor. And I was near the bed and all at once I saw him throw the screwdriver that he had on the bed and with that he put the gun to my back and told me to go into the room where Mrs. Stoll was.

Q. Well, did you go?

621 A. I certainly did.

Q. When you got to that guest room, was the door opened or closed?

A. That I don't know for a certainty—I don't remember that.

Q. Who led the way into the guest room?

A. I did; I was in front.

Q. And where was this man?

A. He was behind me with that gun right at my back.

Q. Had you ever seen that man before?

A. I had not.

Testimony of Mrs. Ann Woollet

Q. Have you ever seen him since?

A. Yes; I see him now.

Q. Where is he?

A. Right there (indicating).

Q. Which one?

A. In the middle—at the table in the middle.

The Court: That is the defendant in this case?

Witness: That's right.

Q. The defendant Thomas Robinson—

A. (Interrupting) Junior.

Q. After you entered the guest room, what happened, Mrs. Woollett?

A. Mrs. Stoll says, "What are you here for?" And he said, "I am here to kidnap you."

622 Q. Then what happened?

A. Well she proceed to—she wanted to give him a check or settle with him in some way so he would not take her away from the home. She wanted to settle the thing right here. And he began to—he made an attempt to tape her mouth.

Q. What did he do with the gun that he had?

A. While he was doing that he had this gun on the bed and she made a grab for the gun and then he struck her over the head and hit her.

Q. What part of the head did he strike then?

A. Over the—moreless the right.

Q. What did he strike her with?

A. A lead pipe—I suppose it was lead—it was a heavy pipe anyway. It was a pipe wrapped in paper.

Q. I will show you that pipe and ask you if you recognize that?

A. That is it—I certainly do.

Mr. Inman: I will ask that this pipe be offered in the record as ~~the~~ government Exhibit No. 34.

(At this point the above described pipe is handed to the Reporter, marked Government Exhibit No. 34 and filed.)

Q. Where was that pipe when you first saw it?

A. Well he got it from his pocket when he struck

Testimony of Mrs. Ann Woollet

623 her over the head.

(At this point Mr. Inman passes the pipe to the jury to examine.)

Q. Was Mrs. Stoll successful in getting the gun?

A. No, she was not.

Q. Why not?

A. Well he struck her over the head and it dazed her—made her feel very ill.

Q. Then after he struck her the first time—

Mr. Hogan (Interrupting): Now we are going to object to that, Your Honor. There has been testimony only that he struck her one time.

Q. Well, after he struck her that time what happened?

A. Then he commanded me to wire or tape her wrists.

Q. Did Mrs. Stoll give you any instructions at that time concerning another gun?

A. Yes, she did—she asked me to get her gun.

Q. Did you start after it?

A. No, I didn't.

Q. Then what did Mrs. Stoll do?

A. He hit her over the head again with that pipe and then she fell back on the bed—he hurt her pretty badly—I thought she was unconscious for a bit.

624 Q. Was that the second blow?

A. Yes, that was the second blow. It brought

blood.

Q. Was there blood from that second blow?

A. There certainly was.

Q. Did she fall?

A. She did.

Q. Where did she fall?

A. Across the bed, on her back.

Q. On her back?

A. Yes.

Q. How long did she remain on that bed?

A. Just no time at all—he pulled her up.

Q. Then what happened?

A. Well then he wired me.

Q. Well with reference to Mrs. Stoll's wrists, what was done to them?

Testimony of Mrs. Ann Woollet

A. Oh he wired her wrists.

Mr. Hogan: Now Your Honor that is entirely suggestive and leading.

The Court: The witness has already said that the defendant had wired Mrs. Stoll's wrists. He is just referring back to the same point in the testimony.

Mr. Hogan: My objection is that he was leading the witness.

625 The Court: He is just directing her attention to the previous testimony which she gave.

Mr. Hogan: All right, Your Honor.

The Court: I don't think it is objectionable.

Q. With reference to Mrs. Stoll's wrists, what did you do?

A. I wired them.

Q. Why did you wire them?

A. He commanded me to do so.

Q. Where was Robinson at that time?

A. He was right in the front of both of us. He had the gun—I did this at the point of a gun.

Q. Where did you get the wire with which you wired her wrists?

A. He handed it to me—he had it in his pocket.

Q. Was there any adhesive tape there?

A. Yes.

Q. Where did that come from?

A. That came out of his pocket, too.

Q. How was Mrs. Stoll dressed at that time?

A. She was fully dressed except she had a kimono on.

Q. After you bound her wrists, was tape used in any way?

626 A. Yes.

Q. How was the tape used?

A. I did that at the point of a gun, too.

Q. What did you do?

A. I tried to get it around her wrists.

Q. Was anything done to Mrs. Stoll's mouth?

A. Well at the first of it he tried to tape her mouth.

Q. With what?

A. Tape.

Testimony of Mrs. Ann Woollet

Q. Adhesive tape?

A. Adhesive tape.

Q. What was done with you after you had tied Mrs. Stoll's hands?

A. Well he then wired my wrists together very tight, so tight that it cut my wrists, and then he shoved me to the floor and wired my ankles and I stayed there.

Q. Wired your ankles?

A. Yes.

Q. Then what happened.

A. Then he got her coat; and he also wanted to know what time Berry was coming and wanted to get away before Mr. Stoll got there, and he said if they did not get away he would kill Mr. Stoll.

Q. Did Mrs. Stoll leave that room?

627 A. Yes, they left together. After he got the coat they left together.

Q. What did he say to her?

A. I don't remember any statement.

Q. Did he give her any direction what to do?

Mr. Hogan: She just stated that she did not remember him making any statement—he can't put words in her mouth?

The Court: No, I think he can go a little further.

Q. Did he give her any direction?

A. No, he just said come with me. He did not need to give her any instructions of how to get out of the house because she knew that.

Q. Did he order her out of the house?

A. He just said, "Come with me."

Q. Did she put on any other clothing?

A. No. He got her coat for her in the same room.

Q. Did they leave the guest room?

A. Yes; I saw them leave and as he left he threw the ransom note on the bed and said, "You give this to Berry Stoll".

Q. Did you touch that ransom note?

A. I did not.

628 Q. Where were you at this time?

A. I was sitting on the floor.

Testimony of Mrs. Ann Woollet

Q. After that did you hear any noise of any automobile?

A. I heard the motor when they started—that's all I heard.

Q. Had you seen any automobile there at the house? Did you see Robinson come in in an automobile?

A. I didn't see him come but some time while ~~he~~ he was there I noticed a black Ford sitting in the driveway.

Q. After you heard that motor of the automobile what did you do?

A. Well I tried to get untied.

Q. Were you successful in getting untied?

A. I finally got my ankles unwired.

Q. Were you able to untie your wrists?

A. Oh no.

Q. What did you do after you got your ankles untied?

A. Well I hardly knew what to do for a while. I studied. Then I went to the telephone and found that it had been disconnected.

Q. Did you leave the second floor of that house?

A. I did not. I went to the bath room and waited for Mr. Stoll. I could see him from that window.

629 Q. The window overlooks what?

A. The window overlooks the garage.

Q. About how long was it before Mr. Stoll arrived Mr. Berry Stoll?

A. Well it seemed like an awfully long time but I suppose about 10 or 15 minutes.

Q. Now with reference to that guest room what sort of cover did the bed have on it?

A. A peach spread.

Q. What was the condition of that bed after Mrs. Stoll was taken from her home that day?

A. Well it was bloody.

Q. Just describe that to the jury?

A. Well there were spots of blood on this spread that she lost.

Q. Did you see the blood flowing from her head?

A. Yes.

Q. After the blow which caused the flow of blood was

Testimony of Mrs. Ann Woollet

struck and after Robinson pulled Mrs. Stoll up from the bed, as you have testified about, did he have occasion to wipe his hands on any article?

A. Oh yes. He pulled a silk garment or something from the chest of drawers and wiped his hands.

Q. What did he have on his hands?

A. Blood.

630 Q. Now did you see Mr. Stoll when he entered the premises that evening?

A. Oh yes.

Q. Mr. Berry Stoll?

A. Yes, I was waiting for him.

Q. Had you at that time been able to untie your wrists?

A. Oh no.

Q. Who untied your wrists?

A. Mr. Stoll did. He came running up. I held my hands up and told him—

Q. (Interrupting) Not what you told him. Robinson had gone at that time?

A. Oh yes.

Q. So without relating any conversation that you had when Robinson was not there, I will ask you who unbound your wrists?

A. Mr. Stoll.

Q. With reference to the ransom note which was thrown on the bed in the guest room, what happened to that?

A. I believe it was just left there.

Q. Do you know whether or not Mr. Berry Stoll picked that up?

A. No, I don't.

631 Mr. Hogan: She has just said that it was left there.

The Court: Well apparently it was not left there indefinitely because it is here in court today.

Witness: We didn't disturb it is what I mean.

Q. Did you go with Mr. Stoll anywhere immediately?

A. Yes, we did—we went to a neighbor's to do some telephoning.

Testimony of Mrs. Ann Woolet

Q. Did he telephone?

A. Yes.

Q. Then where did you go?

A. We came directly home.

Q. To the Stoll residence?

A. That's right.

Q. Did you see Mrs. Stoll after that?

A. No, I did not.

Q. Did you leave the employ of the Stolls before she returned?

A. Yes; that night.

Cross-examination by Mr. Hogan.

Q. Mrs. Woolet, when you and the defendant, as you say, entered this guest room, what was the position of Mrs. Stoll in that room?

632 A. She was standing.

Q. Are you sure that she was standing?

A. Certainly.

Q. Wasn't she sitting in a chair?

A. She was not.

Q. Did she look at him before she spoke the words you have indicated?

A. Well certainly, when anybody walks in front of you, you look at them.

Q. Did she smile at him?

A. She did not.

Q. Are you sure about that?

A. I am.

Q. What did she say to him?

A. She says, "What are you here for"?

Q. And what did he say?

A. He says, "I am here to kidnap you."

Q. Did she talk much on this occasion?

A. No, she just—as you heard me tell the man, she offered him a check or some means of satisfying him that she would be left alone.

Q. He had not asked her for any money, had he?

A. No.

Q. He had not indicated that he wanted any money

Testimony of Mrs. Ann Woollet

633 at all, had he?

No.

Q. And when he said "I am here to kidnap you", he did not say "I am here to kidnap you and hold you for money", did he?

A. He said, "I am here to kidnap you."

Q. That is all he said?

A. That is all he said.

Q. Did she change her position in the room?

A. No, she was right in front of that bed at all times.

Q. Now, to refresh your recollection, wasn't she sitting in a chair when you and he first went into that room?

A. She was not.

Q. And didn't she get up from the chair and go and sit on the bed?

A. Why no. She was not in the chair.

Q. And didn't she sit on the bed, and just look as if she were thinking?

A. No, she didn't look as if she were thinking, but she was sitting on the bed.

Q. Other than offering him a check, what else did she say to him?

A. Well I cannot remember that she said anything right at that time.

634 Q. Did she ever say, "You can't get away with this, you are not a professional, you are an amateur and I am Will Speed's daughter?"

A. I can't remember it.

Q. Well will you say that she did not say those words or words to that effect?

A. I will say she did not.

Q. How long were you gone with Mr. Berry Stoll from that home to the neighbor's house?

A. Just a very short while, long enough to do some phoning.

Q. Where is this neighbor's house located?

A. Down the drive and just across the road—very close.

Q. What is your judgment about the lapse of time you were away from the house?

Testimony of Mrs. Ann Woollet

A. Well time was a funny thing then, but I would say 15 minutes.

Q. Was anybody in the house then when you and Mr. Stoll left?

A. Not a soul.

Q. Now what was done with you after you and Mr. Berry Stoll went to the neighbor's house and placed this phone call?

635 A. There was not anything done with me. I stayed right there at the home.

Q. To whom did Mr. Berry Stoll phone?

A. The family and the police and the federal men. Just everyone that he should.

Q. And then you were brought back or came back with Mr. Berry Stoll to the Stoll house?

A. That is right.

Q. Were you at any time questioned by the authorities?

A. Certainly.

Q. Were you questioned there at the house?

A. Surely.

Q. Were you taken anywhere else and questioned?

A. Yes.

Q. Where?

A. This building.

Q. You were questioned by the FBI?

A. Certainly.

Q. And by the city detectives?

A. Yes.

Q. And by who else?

A. That's all of importance, I suppose.

Q. Well, by anybody else?

A. No.

636 Q. Did Mrs. Will Speed, the mother of Mrs. Alice Stoll, go out to the Stoll home on Lime Kiln Road.

A. Yes.

Q. Did she object to your making any statements to the authorities?

A. She did not say whether she did or not.

Testimony of Mrs. Ann Woolet

Q. Well now didn't she oppose your making any statements to the authorities?

Mr. Inman: We object to that.

The Court: Objection overruled.

Mr. Hogan: Will the Reporter read the question?

(The question last above written was read.)

A. Not that I remember.

Q. Well you would remember it if she did?

A. I think I would remember, yes I do.

Q. Didn't she at one time on one occasion push you from the room when the authorities were questioning you and tell you that she would take over that situation, and for you not to make any statements about anybody?

A. I don't recall it.

Q. If it had happened, wouldn't you recall it?

A. I feel sure I would.

Q. How long did you stay at the Stoll home?

A. Well, just a few days after Mrs. Stoll was returned.

637 Q. You stayed in the home during Mrs. Stoll's absence?

A. That is right.

Q. Were you there when she did return?

A. Not that night.

Q. Where were you on that occasion?

A. At Mr. Speed's home.

Q. Who took you to Mrs. Speed's home?

A. Mr. Tarrant.

Q. What reason was assigned for taking you from the Stoll home?

A. That I don't know.

Q. How long did you stay at the Speed home?

A. Just that one night.

Q. I will ask you this question, Mrs. Woolet, when this man you have described entered the room on which Mrs. Stoll was then in, did she appear nervous?

A. Well no, not exactly. She seemed very calm.

Q. What was your answer?

A. She was very calm.

Q. Very calm. Did she give you the impression that she

Testimony of Mrs. Ann Woollet

had known this man at some time before?

A. She did not.

Q. Did she act like she had known him or seen him before?

638 A. She did not.

Q. His presence there did not seem to excite her then?

A. Well not just when he entered.

Q. That is the time I am referring to—when he entered.

A. That's right.

Q. Was she very calm and talked a whole lot didn't she?

A. Well she discussed the money—paying him a check.

Q. Did she write out a check or just offer to?

A. She didn't—she just offered to.

Q. Did all of this upset you? All of this business?

A. Certainly.

Q. It made you quite nervous, I take it?

A. Surely.

Q. When you were at the Speed home, were you in an excited condition or normal—calm?

A. I was excited.

Q. Did you object to staying at the Speed home?

A. Well I had rather not have been there. I had rather gone some place else.

Q. Did you make known your objections?

639 A. Well I told her we had people in Louisville and that I could stay there—that's all.

Q. What was her answer to that?

A. She had rather I stay there.

Q. Well didn't she insist that you stay there?

A. Well—yes.

Q. Now that was the night that Mrs. Stoll was returned to Louisville?

A. That is right.

Q. That was October 16, 1934?

A. Well I don't know the exact date.

Q. Well it was the day she returned after that seven

Testimony of Mrs. Ann Woollet

days' absence?

A. Yes.

Q. Now did you at any time come back to the Stoll home?

A. I went back the next morning.

Q. How did you go back to the Stoll home?

A. In a cab.

Q. Who ordered the cab for you?

A. I believe Mrs. Speed did—anyhow, somebody on the place.

Q. Did you get hysterical while you were at the Speed home?

A. I think I was hysterical all of the time.

640 Q. Well, with reference to the time you spent at the Speed home, were you hysterical?

A. Yes.

Q. Was your husband there with you?

A. Yes.

Q. Did he object to your being kept at the Speed home?

A. Well it would be much nicer with his own people here.

Q. Did he object?

A. Yes.

Q. And Mrs. Speed would not let either you or your husband leave there?

A. Well she said we should stay there.

Q. Did you ask Mr. Tarrant if he would take you to your husband's people's place and didn't he object on the ground that newspaper men might get to you and that you would talk?

A. I don't remember his asking that.

Q. Well, your husband?

A. I don't know what my husband said.

Q. When you got back to the Stoll home the next day—I mean the next day after being at the Speed home that night, what did you do at the Stoll home?

641 A. I was in bed.

Q. Highly nervous?

A. Yes.

Testimony of Mrs. Ann Woollet

Q. Did you require a physician?

A. Yes, we had one.

Q. Who attended you?

A. Well I can't recall his name.

Q. Well, who obtained a physician?

A. Mr. Stoll saw that I had a physician, but I just cannot recall the man's name.

Q. Well did he get a physician Mr. Stoll knew, or did he get your own physician?

A. One that he knew.

Q. Or did your husband get a physician?

A. I don't know. I was taken care of—I know Mr. Stoll was willing—it was discussed. Who actually called him I don't know.

Q. Was it not Dr. Shacklett of Jeffersontown?

A. Yes.

Q. And your husband had been raised in Jeffersontown?

A. Yes.

Q. So it was a doctor of your husband's choice, wasn't it?

A. Well he must have suggested that to Mr. Stoll
 642 and I did not hear the conversation.

Q. Well what was the purpose of taking you back to the Stoll residence after having spent the night at the Speed home?

A. Well, why should I stay at Mrs. Speed's house?

Q. I am asking you, lady?

A. I was employed at Mrs. Stoll's.

Q. Well was it for the purpose of arranging the house?

A. I don't know.

Q. Well, did you clean up the house when you went back there?

A. No, I did not do any cleaning—I felt too bad.

Q. Did you see Mrs. Stoll when you got back there?

A. No.

Q. Well, was she there?

A. Yes; she was there.

Q. Well, did you see her?

Testimony of Mrs. Ann Woollet

A. I did not see her.

Q. Now are you sure about that?

A. I saw her out on the lawn but I did not see her in the house. I was not close to the woman.

Q. How close were you to her?

A. Well I am not a very good judge of distance.

643 I would say 200 or 300 yards.

Q. I will ask you if it isn't true that she put her arms around you and kissed you?

A. Oh for goodness sakes, no.

Q. You are sure about that?

A. Yes.

Q. You did not make that statement to anybody?

A. Positively not.

Q. You are sure about that?

A. Absolutely.

Q. Did you move any furniture or arrange the furniture in the Stoll home upon your return back from the Speed home?

A. I don't remember. I went to bed. I don't remember doing anything when I got back.

Q. What put you to bed?

A. I was just very nervous and upset.

Q. Did you find any money in a chair in the Stoll home?

A. I can't remember of any.

Q. Or, rather, I will ask you if it isn't true if you were not engaged in cleaning the house and raised a pillow on a chair and behind that chair you found a large sum of money?

A. I can't remember that. I can't even remember
644 doing any work at all when I got back.

Q. Did you ever tell anybody you found a large sum of money behind a pillow in a chair after your return to the Stoll home and after the return of Mrs. Alice Stoll to her own home?

A. I don't remember.

Q. Do I understand you to say that you do not remember either finding the money, a large sum of money, and do I also understand you to say you do not remember

Testimony of Mrs. Ann Woollet

telling anybody that you found any money?

A. I do not remember.

Q. You do not remember either of those incidents?

A. I do not remember.

Q. I will ask you if it isn't true that when you found this large sum of money that that frightened you tremendously?

A. I do not remember finding any money.

Q. And if that is not what put you to bed?

A. I do not remember finding any money. In fact, I don't remember even being upstairs.

Q. Or being downstairs or any place in the house?

A. No.

Q. That bundle of money, or package of money has no significance to you, and you do not remember any-
645 thing at all about it?

A. I do not.

Q. Well has there been any impairment of your memory since this occurrence?

A. Any what?

Q. Are you forgetful?

A. Well this has been a long time.

Q. Well you would not forget such an incident as finding a large sum of money, would you?

A. I hardly think so.

Q. Now you went back to the Stoll home on Lime Kiln Road on Wednesday October 17, 1934, didn't you? That is the day after the night that Mrs. Stoll came back home. Is that right?

A. The next morning after she was returned that night; yes.

Q. Now how long did you stay at the Stoll home?

A. The next morning after she was returned that night was when we went back; and then I think we left the following Sunday.

Q. Well, what caused you to leave?

A. Well their intentions were of closing the home up, and of course our services would not be needed any more.

646 Q. Now were you in bed from the time you got

Testimony of Mrs. Ann Woollet

back to the Stoll home until the Sunday you left?

A. Yes.

Q. I believe you testified before the Grand Jury in this case?

A. I don't remember.

Q. You do not remember testifying before the Grand Jury?

A. I can't get that clear in my mind. I have been in front of so many people.

Q. Well now, do you have difficulty in remembering, or you just don't want to remember?

A. Well it seems to have stunned my mind. I don't remember a lot of things. Just the mere facts that were impressed upon me that I will never forget them as long as I live.

Q. Now, to refresh your recollection, I will ask you if you did not go to this building on the Saturday following the return of Mrs. Stoll and testify before the Grand Jury?

A. I just don't know. I was up here a lot of times.

Q. Well you would remember if you were taken before a group of 12 persons like the jury in that box, wouldn't you?

647 A. I just—

Mr. Inman (Interrupting): I object to that. The Grand Jury does not look like the petit jury.

Mr. Hogan: Well it consists of 12 persons.

Mr. Inman: No, it does not consist of 12 persons.

The Court: The Grand Jury is usually more than 12 people and it does not sit here in the court room. I think you can reframe your question a little differently, Mr. Hogan.

Mr. Hogan: All right.

Q. I will ask it this way—weren't you taken before a Grand Jury, and that Grand Jury was in this building, before a group consisting of 12 persons—

The Court (Interrupting): No, a Grand Jury consists of not less than 16 persons.

Q. (Continuing) Before a Grand Jury consisting of 16 persons, and gave evidence before that body?

Testimony of Mrs. Ann Woolet

A. I just don't recall that.

Q. I will ask you if your husband didn't object to your being brought to testify before the Grand Jury and if Mr. Berry Stoll, your employer, was insisting upon your coming and to the point where he said he would get an ambulance, if necessary, to bring you here?

648 A. Yes; but I don't remember what the occasion was, because I was feeling so bad. I don't remember that occasion. I remember he said that.

Q. Do you remember now that your husband was objecting to your being brought here?

A. Yes; I remember that.

Q. And that was about 2 or 3 days after Mrs. Stoll returned?

A. That I don't know.

Q. And then you were brought down to this building?

A. Several times.

Q. Well did you tell anybody when you came here what you knew about the case?

A. Yes.

Q. When did you leave the—I will ask you this: Isn't it true that after the Sunday following the day you were brought down to the building here on Saturday, that you and your husband were discharged from the Berry Stoll employment?

A. Well we were on a Sunday, but whether or not we were down here on a Saturday, I don't remember. I might have been down here every day in the week because I have been down here so many times.

649 Q. But you were fired on the Sunday following her return?

A. I am almost positive it was on Sunday.

The Court: Well now he said you were discharged—did the employment cease?

Witness: Well they said they were going to close up the house—

The Court (Interrupting): You said you left. He said discharged.

Mr. Hogan: She answered that she said she was discharged.

Testimony of Mrs. Ann Woolet

The Court: No, she said she left.

Mr. Hogan: Now, if Your Honor please, I would like to have that read back—

The Court (Interrupting): Well what I want to know, regardless of what you said, is whether or not you were discharged or whether you left their employment or your employment ceased. How did it happen that your employment terminated?

Witness: He said he was going to close his home up and that our services would not be needed any more. You can take from that what you want to.

The Court: If those are the facts, that is what we are after.

Witness: Yes.

650 Q. Then you and your husband were out of a job for some time?

A. Yes.

Q. Did your husband try to get Mr. Stoll to get other employment for you?

A. Yes, but they did not seem to need our services at that time.

Q. Didn't Mr. Berry Stoll suggest that your husband go to Owensboro and consult a man and get a job down there?

A. Yes; I believe he did.

Q. And that was not successful, was it?

A. No.

Q. How long was your husband out of a job?

A. He really did not have a job for a year that you would call a job.

Q. Well did your husband after that re-enter the employment of Berry Stoll and Mrs. Alice Stoll?

A. Not in their home.

Q. Well, at any place?

A. Yes; out in the State.

Q. Where?

A. Hardyville.

Q. When was that?

A. I think it was about a year after the crime.

651 Q. Did your husband re-enter that service before

Testimony of Mrs. Ann Woollet

you testified in this case in October 1935 when this boy's then wife and father were on trial?

A. We were employed after that.

Q. Are you sure of that?

A. Yes, because I don't remember leaving town to come up here.

Q. You are sure about that?

A. Yes; I am positive.

Q. How long after you testified in October 1935 in this very court room when Frances Robinson and Thomas Henry Robinson Sr. were on trial, did your husband re-enter the employment of Berry Stoll or the Stoll Oil Refining Company?

A. May I ask when this trial was? I have forgotten exactly?

Q. It was in October 1935. Now with that date, will you proceed to answer the previous question?

A. Yes. We were employed that same fall after the trial.

Q. The same month?

A. I think we went down there in November. I am almost positive we went down there in November.

Q. Within a month then from the time of that
652 other trial?

A. Yes.

Q. Were you given any re-employment by the Stolls?

A. No.

Q. Did you ever make any claim, or did your husband ever make any claim, against Berry V. Stoll or Mrs. Alice Stoll?

A. No.

Q. Did you ever consult an attorney about presenting a claim against them or did your husband?

A. I didn't.

Q. Are you sure about that?

A. I didn't.

Q. Did the Stolls ever pay you any money on any claim, or pay your husband any money on any claim?

A. No.

Q. Did you make any arrangements, or did your hus-

Testimony of Mrs. Ann Woollet

band make any arrangement, either one of you, that you would be given employment after your testimony in this court in October 1935?

A. I—

The Court (Interrupting): Now shouldn't this witness testify about what she herself knows? Only her husband would know what he did.

653 Mr. Hogan: She might know what he did.

The Court: She wouldn't know except by hearsay, would she?

Mr. Hogan: If she was present.

The Court: Well, of course, if she was present. But I mean barring that—what happened to them separately and individually, let her speak for herself; and what happened to them jointly, she can tell if she was present.

Mr. Hogan: All right.

Q. With reference to yourself, did you make any arrangements with Berry Stoll or Alice Stoll that you would be given employment, or re-employment, after your testimony here in October 1935?

A. No.

Q. Now, with reference to your husband, do you know of your own knowledge, not from hearsay, whether he made any arrangements with Mr. Berry Stoll to re-enter the Stoll employment after your testimony in this court in October 1935?

A. No.

Q. Did I understand you to say a moment ago that you never consulted any attorney about presenting a claim against either Mrs. Alice Stoll or Mr. Berry Stoll?

A. No.

Q. Well did you at any time, regardless of
654 whether you consulted an attorney, feel aggrieved or that you had been damaged or should be paid as a result of your participation in this whole affair?

A. Well I certainly did not gain anything out of it.

Q. Well the question is, did you feel that you should gain anything out of it?

A. No.

Q. I will ask you if it is not true that you went to

Testimony of Mrs. Ann Woollet

the office of Mr. Joseph Hayse, an attorney in this City, together with your husband, Fowler Woollet, and didn't you consult him about presenting a claim against Mr. Berry Stoll and Mrs. Alice Stoll?

A. I do not remember it.

Q. Well do you say that you did not do that?

A. I do not remember it. I feel that I would remember it.

Q. Did your husband do that?

A. I don't know.

Q. Did you consult any other attorney in Louisville or elsewhere with reference to making a claim against either one of those Stolls that I have just indicated to you?

A. Not that I remember.

Q. Well, would you remember it if you had done that, wouldn't you?

655 A. I think so.

Q. You would remember going to an attorney's office in a matter of that importance?

A. Yes.

Q. And you don't remember that?

A. No.

The Court: Now you have said that three or four times. Let's go to something else.

The Court: Now, Members of the Jury we will take the mid-morning intermission at this time. Do not discuss this case among yourselves or with anyone or permit anybody to discuss it in your presence.

656 After a short recess, the hearing was resumed, as follows:

The Court: All right, Mr. Hogan.

Q. Now, Mrs. Woollet, I will ask you if on or about September 9th, 1935, you did not make these statements.

The Court: Where, Mr. Hogan.

Mr. Hogan: To Mr. Joseph Hayse, in his office, at which time his wife, Mrs. Nellie Stoess Hayse, was present.

Mr. Brown: I am certainly going to object to that if he was acting as attorney and client.

Mr. Hogan: He cannot object because she said she never went to an attorney and presented the matter. That don't

Testimony of Mrs. Ann Woollet

mean that he can't object, but she said—

The Court: I think he can ask her the questions and lay the basis for any possible rebuttal that may exist. We are not interested in the truth of the statements at this time.

Q. "Before this time she (meaning Mrs. Stoll) calls me up there (meaning the room where she was) and wants me to bring her some pumkin seed, and I took them up there, and Robinson comes up and smiles at her. I thought it was just politeness then." Did you make that statement?

A. I don't remember.

The Court: What is the date?

Mr. Hogan: September 9th, 1935.

657 The Court: And where?

Mr. Hogan: Here in Louisville, Kentucky.

The Court: Whereabouts in Louisville, Kentucky?

Mr. Hogan: In the office of Mr. Hayse.

Q. "She didn't look at him mean or anything but just looked at him." Did you make that statement?

A. I don't remember.

Q. "I suppose you would call it a faint smile, but didn't crack her face." Did you make that statement?

A. I don't remember.

Q. "She didn't seem frightened or frantic and was very calm." Did you make that statement?

A. I don't remember.

Q. "She must have known him before as she didn't appear frightened and did so much talking and kept her nerve and she asked him what he was going to do there. I don't remember the exact words." Did you make that statement?

A. I don't remember.

Q. "I don't believe she made any reply to that right at that time (meaning or referring to when he said 'I am here to kidnap you'). I think she just sort of sat and looked at him sort of like she was thinking." Did you make that statement?

A. I don't remember it.

Q. "She didn't seem to be particularly excited or
658 disturbed about it." Did you make that statement?

A. I don't remember it.

Testimony of Mrs. Ann Woollet

Q. "I don't know who said it, but I know she wanted to offer him a check and he wouldn't have that of course."

Did you make that statement?

A. I don't remember it.

Q. "While she is sitting there in a rocking chair"—did you make that statement?

A. I don't remember it.

Q. "He is very nervous, he is afraid Berry Stoll is coming in there before he gets away. She seems to be in a hurry, I guess you call it, and he wants to hurry up and get away, get her all wrapped up before Berry comes home." Did you make that statement?

A. I do not remember it.

Q. "And she said, 'Hurry or let's go', or something to the effect, showing that she was willing to go." Did you make that statement?

A. I don't remember it.

Q. "They told us Tuesday afternoon that she is coming home that night." Did you make that statement?

A. I don't remember it.

Q. "Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out and everybody away, and John Tarrant took us
659 to W. S. Speed's over on Lexington Road." Did you make that statement?

A. I don't remember it.

Q. "Mrs. Speed entered the door and took us up to the servants quarters and put us in a very cool room, a cold room." Did you make that statement?

A. I don't remember it.

Q. "Just had a little bed and a dresser in there and I thought I was in jail for sure it was so bleak looking." Did you make that statement?

A. I don't remember it.

Q. "It was in the early evening about 5:00 or 6:00 o'clock." Did you make that statement?

A. I don't remember it.

Q. "We didn't want to stay there. I just couldn't stand it, and I felt that I wanted to see my mother so bad, so I cried and took on pretty bad, and we wanted to leave and

Testimony of Mrs. Ann Woollet

Mrs. Speed wouldn't let us leave. She said, 'There have been orders for you to stay here,' and she had our supper sent up to us. Then along about 8:00 o'clock Mrs. Speed comes up and tells us, "Alice has been returned," and she didn't act very thrilled, just calm." Did you make that statement?

A. I don't remember it.

Q. "They had told us in the afternoon that she
660 was going to be returned, that is why we had to leave the house." Did you make that statement?

A. I don't remember it.

Q. "After that we went to bed and we spent the night there, and the next morning early, I should say around 7:00 o'clock, she (meaning Mrs. Speed) ordered a taxi for us and we get in this taxi and go back to Berry Stoll's." Did you make that statement?

A. I don't remember it.

Q. "Mrs. Speed asked me—I was downstairs in my bed room—and she asked me to go up there and clean up Mrs. Stoll's room as there were no women in the house." Did you make that statement?

A. I don't remember it.

Q. "That was on Wednesday." Did you make that statement?

A. I don't remember it.

Q. "So I went up to clean her bed room and see her, listen, I went to see her, though before I went up to clean, just as soon as I got back to the house, she put her arms around me (meaning Mrs. Stoll) and kissed me, and this just shocked me to death because she is sort of cold natured, and while cleaning her room, dusting, I raised the pillow up on a lounging chair and I found a pile of money there, and it frightened me so I just dropped the pillow and I

661 don't know whether anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money." Did you make that statement?

A. I did not.

Q. "From then on I didn't do anything. I was just up and down in bed most of the time and then it was in this

Testimony of Mrs. Ann Woollet

time that the doctor came to see me." Did you make that statement?

A. I don't remember it.

Q. "After that I was just in bed most of the time." Did you make that statement?

A. I don't remember it.

Q. "There never was anything said to me about the money." Did you make that statement?

A. I don't remember it.

Q. "It wasn't fastened together, it was just sort of in a nice bulk." Did you make that statement?

A. I don't remember.

Q. "It might have had a rubber band around it, I don't know." Did you make that statement?

A. I don't remember.

Q. "It was in currency." Did you make that statement?

A. I don't remember it.

662 Q. "After I cleaned up the room I went back to bed." Did you make that statement?

A. I don't remember it.

Q. "We stayed at the Stolls then until Sunday morning." Did you make that statement?

A. I don't remember it.

Q. "Then Stoll came down and told us he didn't need us any more. It was not told in my presence but I heard it outside my room." Did you make that statement?

A. I don't remember it.

Q. "I heard him tell Fowler simply that he wouldn't need us any more, that he was going to close up the place and he didn't want to see it any more." Did you make that statement?

A. I don't remember it.

Q. "He said he might open it in the spring, and Fowler (meaning your husband)"—that is your husband's name, is it not?

A. That's right.

Q. (Continuing) "asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up

Testimony of Mrs. Ann Woolet

at all." Did you make that statement?

A. I don't remember it.

Q. "I heard Fowler tell him that I was sick, I
663 couldn't be moved, and he said, 'The sooner the better'." Did you make that statement?

A. I don't remember it.

Q. "He didn't give any reason why he had to leave except he didn't want to see the place any more, Mrs. Stoll couldn't stand to see me." Did you make that statement?

A. I don't remember it.

Q. "He said that we would all be better off." Did you make that statement?

A. I don't remember it.

Q. "We just got ready and left, and before we left Mrs. Woolet, Fowler's mother, Agnes Woolet, asked him for a written statement that 'these children were free of all suspicion', and he said he would be glad to but he had to get permission from the authority or something before he could do it, and he never did do it." Did you make that statement?

A. I don't remember it.

Q. "I told him that I would like to see Mrs. Stoll before I left, and he came down and told me that I couldn't see her, that she was resting and was not feeling well." Did you make that statement?

A. I don't remember it.

Q. "She never did seem frightened through it all (referring to Mrs. Stoll.)" Did you make that statement?

664 A. No.

Q. "They haven't said a word to us since." Did you make that statement?

A. No.

Q. "They paid us up until we left, but didn't give us any notice." Did you make that statement?

A. I don't remember it.

Q. "Fowler asked him if he couldn't put him on at the factory or help him get work, and he gave him the names of two or three men in the oil fields in Owensboro, and he went all around to these places and he couldn't get a job, and we have not seen or had a word from him since." Did

Testimony of Mrs. Ann Woolet

you make that statement?

A. I don't remember it.

Q. Did you ever consult any other attorney than Mr. Hayse about this matter?

A. I have never consulted any.

Q. I will ask you if it isn't true that you went to see Mr. Dudley Inman, the man sitting at this table, but who at that time was not Assistant District Attorney, about presenting a claim against the Stolls?

A. I don't remember it.

Q. Well, you would remember that, wouldn't you?

A. I would think so.

Q. I will ask you if it isn't true that following
 665 the time you saw Mr. Inman and consulted him about this, that you testified in this court in October, 1935, and that your husband was given a job, as you say, back with the Stolls in November, 1935.

A. Would you repeat that? I didn't follow the first of it.
 Mr. Hogan: Would you read the question?

The Court: She has already testified that her husband was given the job, I think, in November, 1935. Is there anything else you want to bring out?

Mr. Hogan: The question is predicated with that part of it in it.

The Court: She has testified to that once. Let's don't make a double barreled question.

Mr. Hogan: All right, we will separate it. Withdraw that question.

Q. I will ask you if it isn't true that after you and your husband went to Mr. Inman, who was then in private practice, and presented your facts to him and advised him that you and your husband thought you had a claim against the Stolls for damages, or otherwise, that you didn't testify in this court in October, 1935, against Thomas Henry Robinson, Sr. and Frances Robinson.

A. I have never talked to Mr. Inman.

Q. You deny that that happened?

666 A. I do.

The Court: She is denying that she talked to Mr. Inman.

Testimony of Mrs. Douglas Potter

Mr. Hogan: All right, you may take her.

Mr. Brown: That's all.

MRS. DOUGLAS POTTER called as a witness for the Government, being first duly sworn by the Clerk, was examined and testified as follows:

Q. State your name to the jury.

A. Mrs. Douglas Potter.

Q. You live here in the City of Louisville, Mrs. Potter?

A. Yes, I do.

Q. During the year 1934 you were unmarried, I believe.

A. Yes, I was.

Q. What was your maiden name?

A. Elizabeth McHenry.

Q. How long have you known Mrs. Alice Stoll?

A. I have known Mrs. Stoll since childhood, about five years old.

Q. You were a close personal friend of Mrs. Stoll's?

A. Yes, I was.

Q. On or about October 10th, 1934, did you have
667 occasion to go to the Lime Kiln home residence of Mrs. Stoll, the day of the kidnapping?

A. Yes, I did. I was out there that night.

Q. About what time did you get there, Mrs. Potter?

A. I got there about 7:00 o'clock.

Q. At that time did you go upstairs?

A. Yes, I did.

Q. What portion of the upstairs were you in, Mrs. Potter?

A. Well, I was in the hall, and I looked in the guest room, the room on the left, and then I walked over a few steps to the bed room and looked in there. Then I went back downstairs.

Q. With reference to the guest room, I will direct your attention particularly to that, would you tell the jury the condition of the guest room and what you saw there?

A. Well, I noticed on the bed there was a large blood stain, about—Oh, I would say about that big, round, on the

Testimony of Mrs. Douglas Potter

bottom—toward the bottom of the bed on the far side, and also some blood up toward the top, the head of the bed, and I just looked and passed on to the next room. I didn't go in the room.

Q. Now then, some days thereafter, and I will direct your attention to Sunday afternoon, October 14th, 1934, at that time, in the afternoon of Sunday, did you
668 receive a telephone call?

A. Yes, I did.

Q. Just relate to the jury what happened then and the substance of any conversation that you may have had.

A. It was Sunday, about 2:00 o'clock, the telephone rang and I did not answer it, someone of my family answered it, and the long distance operator asked to speak to me, Elizabeth McHenry my name was then, and the operator said, "It is a collect call. Henry Sanders is calling." So—

Mr. Hogan: That's hearsay and objectionable, Your Honor.

The Court: Objection sustained.

Q. Don't tell what the operator said. Did you go to the telephone?

A. Yes, I did, but the operator said—

Q. Let's not tell what the operator said. You went to the telephone and talked to some man on the telephone?

A. Yes, I did.

Q. Just tell the substance of that conversation.

A. This man's voice said—

Mr. Hogan: Now that's objected to unless she can identify the man.

Mr. Brown: I think it has been identified, by letters and by Mrs. Stoll.

669 The Court: Objection sustained.

Q. Now, without relating any conversation, sometime after that conversation—I'll hand you a letter and ask you to examine that letter and tell the jury if you received that letter.

A. This is the letter I received. I recognize the handwriting and the contents of the letter.

Q. Who wrote that letter?

Testimony of Mrs. Douglas Potter

The Court: Has that been identified?

Mr. Brown: Yes, it is Government Exhibit 30, I think.

A. I recognize it as Mrs. Stoll's handwriting.

Mr. Brown: I can't recall whether this has been read. I will read it:

"Sunday October 14

Dear Scat:

The phone call to you was O.K. I asked the kidnapper to go somewhere and call you. He said he drove to Indianapolis to do so. He and I believe that Berry delivered the money to Mr. T. H. Robinson, the intermediary, in good faith. However, the kidnapper knows that the police are watching the intermediary. The kidnapper now wants the intermediary to deliver the money to Mrs. Francis Robinson, his daughter-in-law.

670 She will, or already has, received instructions. This is the only person from whom and the only way by which the kidnapper will agree to accept the money. This is final.

Don't attempt to try to call the person who called you or trace it in any way. The person who called is a friend of the kidnapper's and will receive the money. Therefore, instruct all my family to be sure that this daughter-in-law is not followed or interfered with in any way.

If these instructions are followed I will be released unharmed within twenty-four hours. Otherwise, I am sure they will carry out their threat.

Get my family to use all their influence to withdraw the law from this case until I am returned. This is imperative.

Love from
A Scat"

Q. Now, Mrs. Potter, after this letter was received by you, did you turn this letter over to the authorities?

A. I did immediately.

Q. Now, the following Monday, the day after, I will direct your attention to the evening and I will ask you if

Testimony of Mrs. Douglas Potter

you received any other telephone call.

A. Yes, I did.

671 Q. Now, did you talk to the person who was calling?

A. Yes, I did.

Q. Now, with reference to the person that called on Sunday and the person that called on Monday evening, are you able to tell the jury whether or not the same person was talking?

A. Yes, it was the same voice, and the opening words—

Mr. Hogan: Wait a minute—

Mr. Brown: Don't tell any conversation.

The Court: Never mind what was said.

Q. Now then, on the next afternoon, on Tuesday, did you have another telephone conversation?

A. Yes, I did.

Q. With whom was that conversation? Did you recognize the voice?

A. With Mrs. Stoll.

Q. Did you communicate the information that you received then to any person?

A. I communicated it immediately to her family.

Q. On that same day that you received the telephone conversation from Mrs. Stoll, was Mrs. Stoll returned home?

A. Yes, she was.

Q. Did you see Mrs. Stoll shortly thereafter, and, if so, when did you see her?

672 A. I saw her either the next day or the day after, about—I think perhaps the day after, either that or the next day.

Q. Now, Mrs. Potter, would you describe Mrs. Stoll's appearance to the jury, when you saw her after her return home?

A. Well, she was in a highly nervous state, she had a bump on her forehead—

Mr. Hogan: Of course, the same objection, if Your Honor please, on the same ground as heretofore.

The Court: Objection overruled.

Q. Go ahead.

Testimony of Mrs. Douglas Potter

A. And she had a cut back in her hair, and she was very nervous, couldn't keep her mind on any one thing, was walking up and down, was very sensitive to any voice or anyone coming up the driveway. She was in a highly nervous state. Her mouth, the skin was all raw around the outside of her mouth, and also on her wrists her skin was raw.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mrs. Potter, you have identified this letter of October 14th. Are you familiar with Mrs. Stoll's handwriting and were you at that time?

A. Yes, I was.

673 Q. Had you seen her writing or signature on various occasions previous to this time?

A. Yes. I had some of her writing in my possession that she had written me on a trip, and I am very familiar with it. I was at school with her.

Q. And what school did you attend?

A. Louisville Collegiate School.

Q. So you were entirely familiar with this handwriting?

A. I was, yes.

Q. And were you satisfied that this was her handwriting?

A. Yes, I was.

Q. Were you so familiar with it that you were not required to compare it with any of her other handwritings to determine its genuineness?

A. No, I was satisfied when I saw it.

Q. There was no variation in this handwriting from other handwriting of hers that you had.

A. Well, I didn't compare them to any other, but it seemed to me—I was perfectly satisfied in my mind that it was her handwriting.

Q. No apparent deviation or changes?

A. I didn't compare it that close, I didn't compare it, but it was very clear to me that it was her hand-
674 writing. I have seen it many, many times.

Q. Did she write usually and customarily in this

Testimony of Mrs. Douglas Potter

large type of writing?

A. Yes, it seems to me.

Q. This, would you say, is a fair sample of her writing ordinarily and customarily?

A. Yes, I think so.

Q. Are you sure about that now?

A. Why no, I am not sure about it, because she probably writes many ways, but it is very clear to me that it was her handwriting. Everybody writes a little larger or a little smaller sometimes, depends on the size of the paper, I think.

Q. There was no noticeable difference or change in this from other handwritings of hers that you knew about and had in your possession?

A. No, I won't say that. I don't know how many different papers she has written in her life, but that seemed to be her handwriting very clear. I couldn't say that.

Q. What other schools did Mrs. Stoll attend?

The Court: If the witness knows of her own knowledge.

Mr. Hogan: She says she has known her since five, and, of course, if you know of your own knowledge.

A. I met her in about the Fifth Grade at Collegiate and then she stayed there and graduated and went to college, Bryn Mawr College.

Q. Where is Bryn Mawr located, for the purposes of the record?

A. Bryn Mawr.

Q. What state?

A. Pennsylvania.

Q. That's a girl's school?

A. That's a girls' college, woman's college.

Q. Rather an exclusive college for girls?

A. I don't think so. What do you mean by exclusive?

Q. Well, usually people of means attend that college, do they not?

A. It is not a public college, you have to pay to get in. There is no requirement on any amount of money to get in. I don't think the tuition is any more than any other college.

Q. It is generally looked upon as a rather high-class college.

A. Scholastically, it is. Scholastically, you mean?

Testimony of Mrs. Douglas Potter

Q. Scholastically and socially.

A. I don't know anything about the social, that's never advertised in any college, but scholastically it stands very high, I know that.

Mr. Hogan: That's all, Mrs. Potter.

Mr. Brown: That's all.

676 CORNELIUS GERST called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Cornelius Gerst.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. Were you employed there in October, 1934?

A. I was.

Q. In what capacity?

A. Assistant Secretary.

Q. On October 11th, 1934, were you assigned to any unusual task?

A. We were. We were asked to assemble in the directors' room at 2:00 o'clock for a special assignment.

Q. What was that assignment?

A. To list the numbers of money.

Q. Just what did you do?

A. Well, we were each given a package of money and the numbers of each bill were listed on sheets of paper.

Q. Did you list money in your handwriting?

A. I did, and initialed each sheet.

Q. What initials did you put on?

A. C.A.G.

677 Q. I'll show you this piece of paper, headed "Page 3 \$5.00," the initials "C.A.G."

Mr. Hogan: Mr. Inman, may I see those before you start?

Mr. Inman: Yes.

Testimony of Cornelius Gerst

Q. I will ask you to tell the jury what that is,

A. That is a list of the first page of \$5.00 bills of which we listed the numbers.

Q. Did you list those numbers yourself?

A. I did, personally, yes.

Q. And the numbers that are on this page, where did you get them?

A. From the bills themselves.

Mr. Hogan: Are you going to connect that up with later testimony?

Mr. Inman: Yes.

Q. I'll show this page marked "Page 8 \$5.00" and the initials "C.A.G.", and ask you to tell the jury what that is.

A. We likewise listed the numbers off of each one of the bills in that package.

Q. All five dollar bills?

A. All five dollar bills.

Q. Did you list those yourself?

A. Listed them personally.

678 Q. I'll show you Pages 14, 23, 27, 33, 39 and 45, all bearing in addition to the page numbers I have indicated, the symbol \$5.00 and the initials C.A.G., and ask you to tell the jury what those pages contain.

A. Likewise a list of the various packages of money that was handed to us to be listed, and I personally listed each number.

Q. All \$5.00 bills?

A. All \$5.00 bills. All \$5.00 bills.

Q. I'll show you these papers headed Page 50, Page 56, Page 62, and Page 67, bearing in addition to the page number I have indicated, the symbol \$10.00 and the initials "C.A.G." and ask you to tell the jury what those pages contain.

A. These pages likewise contain the numbers of the packages of ten dollar bills, and each number was listed by me personally.

Q. I will ask you to file all of these pages with your testimony as Government Exhibit No. 35.

A. I do.

Testimony of Cornelius Gerst

(The pages referred to were handed to the reporter and filed with the record as Government Exhibit No. 35.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. You have no personal knowledge of what happened to that money after you listed it?

A. No, sir, I do not.

Mr. Hogan: That's all.

ARTHUR E. GOHMANN called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Arthur E. Gohmann.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity?

A. Trust Investment Officer.

Q. Were you employed there in October, 1934?

A. I was.

Q. On October 11th, 1934, were you assigned to any unusual task?

A. Yes.

Q. What was that task?

A. It was the listing of currency for the payment of the ransom money.

Mr. Hogan: That's objected to.

680 The Court: Objection sustained. He doesn't know of his own accord what the money went for or what it was.

The Witness: Except we were told.

The Court: Yes, except what you were told. Objection sustained as to what he was told.

Mr. Inman: You are objecting only to the answer of

Testimony of Arthur E. Gohmann

the ransom money.

Mr. Hogan: Will the Court instruct the jury?

The Court: Yes. The jury will not consider that phase of it.

Q. You were, however, listing currency, were you not?

A. Yes, sir.

Q. Where did you do that?

A. Down in the directors' room of the bank building at Fifth and Jefferson.

Q. Did you list that on sheets of paper?

A. Yes, sir.

Q. How did you mark the sheets of paper?

A. Well, we made two columns, as I recall it, one listing the type of bill and the other the number of the bill, and each man initialed the pages that he worked on.

Q. I'll show you these papers bearing the heading, Page 1 \$5.00 denomination; Page 5, \$5.00 denomination; Page 16, \$5.00 denomination; Page 21 \$5.00; page 29 \$5.00; Page 36 \$5.00; and Page 43 \$5.00, and ask you to examine
681 them and tell the jury if there are any initials appearing on each of those pages.

A. Each page has my initials of "A.E.G." on the upper righthand corner, also the denomination of the bill.

Q. And what other information is on those pages?

A. Beside the denomination of the bills it shows the type of bill and the number on the bill.

Q. The serial number?

A. The serial number, yes.

Q. Did you write those serial numbers?

A. I did.

Q. Where did you get them?

A. Got them from the bills themselves.

Q. I'll show you these papers, headed Page 54 \$10.00 and Page 69 \$10.00, and ask you to tell the jury what initials appear on those pages.

A. In the upper righthand corner "A.E.G." Those are my initials on \$10.00 denominations.

Q. And what other information appears on those papers?

A. The type of bill and the serial number of the bill.

Testimony of Arthur E. Gohmann

Q. And where did you get those serial numbers?

A. Direct from the bill itself, from the currency itself.

682 Q. I'll show you these papers, marked Page 71 \$20.00 and Page 72 \$20.00, and ask you to tell the jury what initials appear on those pages.

A. The same initials, my own—"A.E.G."

Q. And what information is contained on those two pages?

A. The same, the type of bill and the serial number of the bill.

Q. Where did you get that information?

A. Got it directly from the currency itself.

Q. And all of these were \$20.00 bills?

A. Those two pages were all \$20.00 bills; yes, sir.

Q. I will ask you to file these sheets with your testimony as Government Exhibit No. 36.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 36.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Gohmann, you do not of your own personal knowledge know what went with that money after you listed it on that sheet?

A. Beg your pardon.

Mr. Hogan: Read the question, please.

683 (The last question on the preceding page was read by the reporter.)

A. What went with the money?

Q. Yes.

A. No, I don't know of my personal knowledge.

Mr. Hogan: That's all, sir.

MATTHEW B. SENN called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Testimony of Matthew B. Senn

Redirect Examination by Mr. Inman.

- Q. State your name to the jury.
 A. M. B. Senn.
 Q. Where are you employed?
 A. Fidelity & Columbia Trust Company.
 Q. Here in Louisville, Kentucky?
 A. Yes, sir.
 Q. In what capacity?
 A. Treasurer.
 Q. Were you employed by that company in October, 1934?
 A. Yes, sir.
 Q. On October 11th, 1934, were you assigned to any unusual duties?

A. That's a little difficult to say.

- 684 Q. In October, 1934, were you assigned to see someone and record the serial numbers of various five and ten dollar bills?

Mr. Hogan: Judge, I want to object to that.

The Court: On what basis?

Mr. Hogan: He said that he didn't remember being assigned to any unusual duty, as I understood him.

Mr. Inman: He didn't say that.

The Court: He didn't say he didn't remember. He said that was hard to do. You think the question is leading, is that the idea?

Mr. Hogan: I will withdraw it.

A. Will you repeat it, please?

(The question was read by the reporter.)

A. It was around that time, yes.

Q. Was anyone else assigned at the same time with you?

A. Yes.

Q. Who?

A. Mr. Gohmann, Mr. Gerst, Mr. Tobe, Mr. Adams, Mr. Render.

Q. Where did you perform those duties, Mr. Senn?

A. In our directors' room.

Q. I'll show you these papers, bearing the heading Page

Testimony of Matthew B. Senn

685 6 \$5.00, the initials "M.B.S."; Page 10 \$5.00, the initials "M.B.S."; Page 15 \$5.00 and the initials "M.B.S."; Page 26 \$5.00 and the initials "M.B.S."; Page 35 \$5.00 and the initials "M.B.S."; Page 42 \$5.00 and the initials "M.B.S." and ask you to tell the jury what those papers contain.

A. Serial numbers taken off of \$5.00 bills, United States currency.

Q. I'll show you these pages, headed Page 46 \$10.00 and the initials "M.B.S."; Page 52 \$10.00 and the initials "M.B.S."; Page 60 \$10.00 and the initials "M.B.S."; Page 64 \$10.00 and the initials "M.B.S."; and ask you to tell the jury what information is contained in those papers.

A. Serial numbers taken off of \$10.00, United States Government bills.

Q. Did you take that information yourself?

A. I did.

Q. And record those serial numbers?

A. I did.

Q. Are they your initials on those pages?

A. Yes.

Q. I will ask you to file those pages with your testimony as Government Exhibit No. 37.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 37.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

686 Q. Mr. Senn, you don't know what happened to this money after you listed it?

A. No, I do not.

Mr. Hogan: That's all.

ERNEST V. KAMPFMUELLER called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Testimony of Ernest V. Kampfmüller

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Ernest V. Kampfmüller.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity?

A. I am now Assistant Vice President.

Q. In October, 1934, were you employed by that company?

A. I was.

Q. On October 11th, 1934, were you assigned to any unusual duties at that bank?

A. I was.

Q. What were those duties?

A. I was told to be in the directors' room at 2:00 o'clock. At that time I didn't know what I was supposed to do.

687 Q. What did you do there?

A. I listed the numbers of currency on those yellow sheets.

Q. Did you place an initial on those sheets?

A. I did.

Q. What initials?

A. E.V.K.

Q. I'll show you these pages, headed Page 5 \$5.00 with the initials E.V.K.; Page 11 \$5.00 and the initials E.V.K.; Page 18 \$5.00 and the initials E.V.K.; Page 24 \$5.00 and the initials E.V.K.; Page 30 \$5.00 and the initials E.V.K.; Page 37 \$5.00 and the initials E.V.K.; Page 44 \$5.00 and the initials E.V.K.; and ask you to tell the jury what information is contained on those sheets.

A. Well, they are the serial numbers of various \$5.00 bills that were given to me that I had to list the numbers on these sheets.

Q. Did you record those serial numbers?

A. I did.

Q. Where did you get them?

A. The bills?

Q. No, the serial numbers?

Testimony of Ernest V. Kampfmuehler

A. Oh, off the bills.

Q. Now, I will show you these pages, headed Page 51 \$10.00 and the initials E.V.K.; Page 59 \$10.00 and the initials E.V.K.; Page 65 \$10.00 and the initials E.V.K.;
688 and ask you to tell the jury what information is contained on those sheets.

A. Well, these are the serial numbers that I took from the bills of the \$10.00 and listed them on these sheets.

Q. You recorded them?

A. I did.

Q. I will ask you to file those pages with your testimony as Government Exhibit No. 38.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 38.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Kampfmuehler, you don't know what happened to the money after you listed it.

A. I do not.

Mr. Hogan: That's all.

L. M. RENDER called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

689 A. L. M. Render.

Q. Where are you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity?

A. I am one of the Vice Presidents.

Q. In October, 1934, were you employed by that company?

A. I was.

Testimony of L. M. Render

Q. On October 11th, 1934, were you assigned to any unusual duties there?

A. Yes, sir.

Q. What were those duties?

Mr. Hogan: Mr. Render, how do you spell your name?

The Witness: R-e-n-d-e-r.

Q. What were those unusual duties?

A. To tabulate a lot of currency.

Q. Tabulate it in what manner, Mr. Render?

A. Take the serial numbers of the bills.

Q. Where did you perform those duties?

A. In the directors' room of the Fidelity & Columbia Trust Company-Citizens Union National Bank.

Q. Did you record the serial numbers of bills?

A. I did.

Q. Did you place any initial on the sheets of paper you used?

690 A. Yes, I placed my initials, L.M.R.

Q. I'll show you these papers, headed Page 7, L.M.R. and the symbol \$5.00; Page 17, L.M.R. and the symbol \$5.00; Page 20, L.M.R. \$5.00; Page 28, L.M.R. \$5.00; Page 34, L.M.R. \$5.00; Page 40, L.M.R. \$5.00; and tell the jury what information is contained in those pages.

A. That's the serial numbers—the list of serial numbers of the bills that were in those various packages.

Q. What size bills?

A. Those were all \$5.00 bills.

Q. Did you list those yourself?

A. I did. That's my handwriting.

Q. Where did you get the numbers?

A. From the bills themselves.

Q. I'll show you these, headed Page 47 L.M.R. \$10.00; Page 53 L.M.R. \$10.00; Page 57 L.M.R. \$10.00; Page 63 L.M.R. \$10.00; and Page 70 L.M.R. \$10.00; and ask you to tell the jury what information is contained on those pages.

A. That lists the serial numbers of the ten dollar notes.

Q. Did you list them yourself?

A. I did.

Q. And where did you get those numbers?

A. From the bills themselves.

Testimony of L. M. Render

Q. I will ask you to file these pages with your
691 testimony as Government Exhibit No. 39.

A. I do so file them.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 39.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Render, you don't know what happened to the money that you listed on those pages?

A. No, sir; not the ultimate destination.

VINCENT TOBE called as a witness in behalf of the Government, benignly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Vincent Tobe.

Q. Where are you employed?

A. Jefferson Boat Machine Company.

Q. In October, 1934, where were you employed?

A. Fidelity & Columbia Trust Company.

Q. In what capacity.

A. Security Teller.

Q. On October 11th, 1934, were you assigned to
692 any unusual duties there?

A. Yes, sir.

Q. And what was the assignment?

A. Putting up the money, the ransom money.

Mr. Hogan: That's objected to.

The Court: Now, Mr. Tobe, the question is—you don't know of your own knowledge, I suspect, what the money was. You were just given money of some kind.

The Witness: That's right.

The Court: Don't describe it in any other way. The jury

Testimony of Vincent Tobe

will be instructed not to consider that description of the money.

A. Taking the numbers of the bills.

Q. What did you do with the numbers?

A. Listed them on a sheet.

Q. Did you identify those sheets that you worked on?

A. Yes, sir.

Q. How?

A. With the initials on the bottom.

Q. I'll show you these sheets, headed Page 2 \$5.00 and the initials V.G.T.

A. That's correct.

Q. Page 12 \$5.00 and the initials V.G.T.

A. That's correct.

Q. Page 19 \$5.00 and the initials V.G.T.

A. That's correct.

693 Q. Page 25 \$5.00 and the initials V.G.T.

A. That's correct.

Q. On page 32 \$5.00 and the initials V.G.T.

A. That's correct.

Q. Page 38 \$5.00 and the initials V.G.T.

A. That's correct.

Q. And ask you to tell the jury what those pages contain.

A. They contained the money that we were taking the numbers of.

Q. Serial numbers?

A. Serial numbers.

Q. Did you write those serial numbers?

A. Yes, sir, I have written everyone of them.

Q. Where did you get them?

A. They were turned over to us down at the directors' room.

Q. I mean, were they taken from the original bill?

A. From the actual bill; yes, sir.

Q. Were they all \$5.00 bills?

A. No.

Q. On those pages?

A. Five's on these pages, yes, sir; five's, that's correct.

Q. All right, I'll show you this page, headed Page 48

Testimony of Vincent Tobe

\$10.00 and the initials V.G.T.

694 A. That's correct.

Q. Page 55 \$10.00 and the initials V.G.T.

A. That's correct.

Q. Page 61 \$10.00 and the initials V.G.T.

A. That's correct.

Q. Page 66 \$10.00 and the initials V.G.T.

A. That's correct.

Q. And ask you to tell the jury what information is contained on these pages.

A. That's the serial numbers of the \$10.00 bills.

Q. Did you write those serial numbers?

A. Yes, sir, I have written everyone of them.

Q. And the \$10.00 bills, I will ask you whether you got that information from the ten dollar bills.

A. Correct.

Q. I will ask you to file these pages with your testimony as Government Exhibit No. 40.

A. I do.

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 40.)

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Tobe, you don't know what happened to the money after you listed it.

A. No, sir; I do not.

Mr. Hogan: That's all, sir.

695 FLAVIE C. ADAMS next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Flavie C. Adams.

Testimony of Flavie C. Adams

Q. Where are you employed, Mr. Adams?

A. I am not employed; I have a business of my own.

Q. In October of 1934, where were you employed?

A. At the Fidelity & Columbia Trust Company.

Q. In what capacity?

A. I was a Trust Officer.

Q. On October 11th, 1934, were you assigned to any unusual duties?

A. Yes.

Q. What was that duty?

A. Taking the numbers on certain currency.

Q. What did you do with that number?

A. Listed it on those sheets of paper.

Q. I will show you these pages—first, I will ask you, did you identify the pages by any mark or initial?

A. Putting on initials.

Q. What initials?

A. F.C.A.

Q. I'll show you these pages, headed Page 4
696 \$5.00 and the initials F.C.A.; Page 13 \$5.00 and the initials F.C.A.; Page 22 \$5.00 and the initials F.C.A.; Page 31 \$5.00 and the initials F.C.A.; Page 41 \$5.00 and the initials F.C.A.; and ask you to tell the jury what information is contained on those pages.

A. On those pages are a list of serial numbers of \$5.00 bills, and they were listed by me as verified by my initials at the top.

Q. Were they taken from the original bills?

A. Taken from the original bill.

Q. I'll show you these papers, headed Page 49 \$10.00 and the initials F.C.A.; Page 58 \$10.00 and the initials F.C.A.; and Page 68 \$10.00 and the initials F.C.A.; and ask you to tell the jury what is contained in those pages.

A. Those are numbers, serial numbers, taken from ten dollar bills which were listed here by me, and my initials are here to identify them.

Q. I will ask you to file those pages with your testimony as Government Exhibit No. 41.

A. I do.

Testimony of Flavie C. Adams

(The pages referred to were handed to the reporter and are filed with the record as Government Exhibit No. 41.)

Mr. Inman: You may ask the witness.

697 Cross-examination by Mr. Hogan.

Q. Mr. Adams, you don't know what happened to the money after you listed it?

A. No.

Mr. Hogan: That's all.

The Court: Members of the jury, we will now recess for lunch. Do not discuss the case among yourselves or with anyone, or permit anyone to talk about it in your presence. The Marshal will recess until 2:00 o'clock.

Convened, pursuant to adjournment, and the following proceedings were had:

698 BERRY V. STOLL, was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name?

A. Berry V. Stoll.

Q. Where do you live?

A. Louisville, Kentucky, on Lime Kiln Lane.

Q. Are you the husband of Mrs. Alice Speed Stoll?

A. I am.

Q. On October 10, 1934, approximately what time did you return from your office that day?

A. Approximately 5:30 that evening I got home.

Q. Now, without detailing any conversation that you may have had, who did you find there in your home at that time?

A. When I got home Ann Woolet, the maid, was bound upstairs. Her hands were bound with wire and she was right at the doorway of the guest room, standing there, in a hysterical condition.

Testimony of Berry V. Stoll

Q. With reference to your home, in what portion of your home was she?

A. The entrance to the guest room, in the hall
699 between the guest room and the bath room—the two rooms were right together.

Q. After you had found Mrs. Woollet there, what did you do?

A. I ran into the guest room, saw the condition of the room, the large splotches of blood on the bed, a pool of blood in the center and another pool of blood close to it on the side, and on the side of the bed, dropped on the floor was the ransom note and up near the head of the bed on the floor was a pipe wrapped in paper.

Q. I show you government Exhibit No. 34 and ask you to examine that and tell the jury whether or not that is the iron pipe wrapped in the condition in which you found it at that time?

A. Yes, this is the iron pipe that was lying on the floor by the bed in the guest room.

Q. Now I show you government Exhibit No. 33, and ask you to examine that and tell the jury whether or not that is the ransom note?

A. This is the ransom note that was on the floor by the bed in the guest room.

Q. Now after you examined the floor and found these two things, what did you do?

A. I unbound Ann first, and took the wire off of her wrists. She was bound securely with wire; and
700 then I ran down the stairs and she followed me and we drove to Mr. James Clark, Jr.'s house whose entrance is directly opposite our entrance, so you drive down our entrance, across Lime Kiln Road and up to the other entrance.

Q. I will show you government Exhibit No. 1 and this is representing your entrance here—

A. This is our home and I came down the driveway and across over into Mr. Clark's home which is now owned by Mr. Sallee. Mr. Clark died and Mr. Sallee bought the place.

Q. You went in your automobile?

Testimony of Berry V. Stoll

A. Yes.

Q. Who accompanied you?

A. Ann came with me—the maid.

Q. At that time did you communicate with the authorities?

A. Yes. I called the police—the county police and the city police. I called my wife's father, Mr. Speed, and I called my brother, George Stoll, asking him to—

Q. (Interrupting) Let's not detail any conversation that you had with him. Now after you had communicated with authorities, the necessary authorities, and other necessary persons, what did you do, Mr. Stoll?

A. I then went back to the house and I looked
701 over into the ditch right near the entrance and on both sides of the driveway—I stopped and looked around there because I thought sure Mrs. Stoll was killed from the amount of blood in the room and—

Mr. Hogan (Interrupting): We object to what he thought, Your Honor.

The Court: Objection sustained.

Q. Now then shortly thereafter did agents of the Federal Bureau of Investigation and various police officers come to your assistance, Mr. Stoll?

A. Yes. First the police, and the fingerprint expert and my brothers, Mr. and Mrs. Speed, the head of the Department of Safety, the Mayor, and the Department of Justice men arrived within a few minutes of each other. Mr. Marshall Bullitt, as I recall it, brought the Department of Justice men out with him in his car, and they took charge of the case.

Q. Now some time afterwards was this ransom note opened and read?

A. Yes, we went into the dining room around the table and opened the ransom note and we read it. We were very careful not to touch it from a fingerprint standpoint because we wanted to get his fingerprints off of it.

Mr. Brown: At this time I would like to read the ransom note. I don't believe it has been read yet in
702 evidence.

The Court: It has not been read, nor has it been

Testimony of Berry V. Stoll

introduced in evidence yet.

Q. First, I will ask you if this is the ransom note that you found at that time and the one that you just said you read?

A. Yes, this is the ransom note that we read.

Mr. Brown: It has been marked for identification as Government Exhibit No. 33, and I would now like to introduce it in evidence.

The Court: All right.

Mr. Brown (Reading):

(In pencil across the envelope):

“\$50,000 for Mrs. Stoll”

(In black type across the envelope):

“TO THE MEMBERS OF THE STOLL FAMILY”

(And in pencil after that):

“And Mr. Speed”

(In red type across the envelope):

“DO NOT CALL IN POLICE, BUT READ THIS LETTER, OR YOU WILL NEVER SEE STOLL AGAIN, EITHER ALIVE OR DEAD.”

(Across the top of the ransom note in ink):

“Intended for C. C. Stoll at first”

(In black type):

703 “TO THE MEMBERS OF THE STOLL FAMILY:

(And after that in pencil):

“And Mr. Speed” (In red type): “WARNING”

(In black type):

“Stoll has been kidnapped for ransom. Overcome your first natural impulse to call in the police. Otherwise, you will regret it.

Testimony of Berry V. Stoll

"The life of Stoll, and later on the lives of his sons and their families, depend on the Stoll family READING THIS LETTER THOROUGHLY AND OBEYING OUR INSTRUCTIONS FROM THE BEGINNING AND FOR ALL TIME THEREAFTER.

"Read this letter and you will realize that we mean business. We want the money, not the life of Stoll, BUT IF YOU LET THE POLICE KNOW THE DETAILS OF THIS LETTER, OR WHERE PAYMENT OF THE RANSOM MONEY IS TO BE MADE, OR IF THERE IS ANY EVIDENCE THAT YOU MEAN TO DOUBLE CROSS US BY SENDING A 'DUMMY' PACKAGE, WATCHING THE INTERMEDIARY NAMED IN THIS LETTER, OR OTHERWISE TRY TO SET A TRAP FOR US, WE ARE PREPARED TO DO THIS:"

(In red type):

704 "KILL STOLL AND BURN HIS BODY; SCATTER HIS ASHES IN A STREAM OF WATER; CLEAN THE GALVANIZED TANK IN SUCH A MANNER AS TO DEFY A MICROSCOPIC EXAMINATION OF IT. THERE WILL BE NO ASHES LEFT TO ANALYZE. THIS WILL KEEP THE LAW FROM FINDING THE CORPUS DELICTI, OR THE BODY OF STOLL.

(In black type):

"This is no idle threat. We are fully aware that kidnaping is punishable by death in Kentucky, and also we would be subject to the death penalty under the Federal Law, or Lindberg Law, if we were forced by the publicity to take Stoll or his body over a state line. However, the CAPITALISTS with their power got this Law passed, as it could not be wrong to rid this country of the capitalist or make him share his money with his less fortunate brothers. It would be an act of patriotism to kill this capitalist, Stoll, who was overheard to say, concerning Roosevelt and the

Testimony of Berry V. Stoll

NRA, "Mr. so-and-so, we are in the hands of a dictator. We capitalists do not know what to look forward to; we are conserving our money; why, I would not spend one dime to even paint up my filling stations." No, he wouldn't, but he will spend plenty to get returned to his family alive. He is really in the hands of a dictator now. It is this octopus, the capitalist, who is menacing the very foundations of our country.

705

It is a serious mistake for right-thinking men to declare it an offense to kill or kidnap for a ransom a capitalist.

"HOWEVER, we cannot aggravate our offense any by killing Stoll, if we have to. He is the main witness against us, and his body could not be produced, so the law could not prove we killed him.

"We are taking Stoll to our farm. We have already been told that we would be dispossessed within ten days for not paying rent. Our money is low. We are not able to feed ourselves for long, much less Stoll. We are just about as desperate as once-respected working-men can get, harassed as we are by capitalists such as Stoll, Mellon, Morgan, Insull, etc.

"FROM THESE CONDITIONS, THERE IS NO TIME FOR A BUNCH OF NEGOTIATIONS BETWEEN US, OTHER THAN THOSE IN THIS LETTER. NO BARGAINING.

"In the kidnappings of Baby Lindberg, William Hamm, Jr., Jake Factor, Charles F. Urchel, Nell Donnelley, Charles Boetcher 11, etc., the police were called in and the Federal men too, YET THE FAMILIES WERE FORCED TO PAY THE RANSOM MONEY,

706

because the police were unable to solve the cases in time to prevent payment. The police only delayed the return of the victim, and caused more suffering all around. ONCE YOU CALL IN POLICE, YOU CANNOT GET RID OF THEM WHEN YOU DISCOVER THAT THEY CANNOT BRING YOUR FATHER BACK, AND YOU WOULD LIKE TO GO AHEAD AND PAY THE RANSOM AS DIRECTED,

Testimony of Berry V. Stoll

BUT THEY WONT LET YOU CONTACT THE KIDNAPERS.

"You cannot deal SECRETLY with the police, either. There is always some crooked cop who will tip off a newspaper reporter for a sum of money.

"**YOU WOULD BE UNABLE TO CATCH US IN TIME TO SAVE THE LIFE OF STOLL.** We are not the average run of criminal, as you have found out. The police can not go out to some pool hall and round up our gang. We have no record. It is useless to look in the conventional Rogues' Gallery for our pictures. Our job is too carefully planned and executed. Police will waste your time having you run down to the station to look over suspicious or known criminals. (In red type) **THEN IT WILL BE TOO LATE FOR YOU TO SAVE STOLL'S LIFE.** We cannot wait over a week for our money.

707 RESULTS OF HAVING TO KILL STOLL: Besides sentimental reasons, the family will not be able to collect his life insurance, because you **CANNOT FURNISH PROOFS OF DEATH**, as there is no **CORPUS DELICTI**; His business will suffer from lack of his leadership and prestige; The bank loans are based on the strength of his life insurance, and when they find out how he was done away with, and that his insurance cannot be collected, they will press the company for more collateral on their loans.

"COMPLETE INSTRUCTIONS FOR PAYMENT ARE ON NEXT PAGE: TURN OVER."

(Second page)

(In ink) **"SAME FOR MRS. STOLL EXCEPT AMOUNT—\$50,000"**

(RED TYPE) INSTRUCTIONS

(Black type) **"AMOUNT OF RANSOM \$50,000 (fifty thousand dollars).**

"\$25,000 to be in \$10.00 bills and \$25,000 to be in \$20.00 bills.

Testimony of Berry V. Stoll

708 "Put this money in as small a paste-board box as possible; pack and wrap it carefully so that it will be accepted by the Railway Express Agency; declare the value of package at \$10.00 do not state what it really contains.

"Address it carefully and plainly; then send it by RAILWAY EXPRESS ONLY, to the INTERMEDIARY WHO STOLL AND ONE OF OUR MEMBERS AGREE ON BEFORE HE IS TAKEN FROM THE HOUSE.

"THIS INTERMEDIARY'S NAME WILL BE FILLED IN AT THE BOTTOM OF THIS PAGE BY STOLL. It will have to be one of several business men living in Nashville, Tennessee, who we know to be a friend of Stoll, and who we are prepared to watch in order to see if you try to set a trap for us. We will allow Stoll to choose one of these men.

"THIS INTERMEDIARY MUST HAVE ABSOLUTE FREEDOM FROM POLICE. HE MUST NOT EVEN BE QUESTIONED BY ANYONE. YOU MUST NOT CORRESPOND WITH HIM. (Red type): IF HE IS PUT WISE, THE DEAL IS OFF AND WE WILL CARRY OUT OUR THREAT AS TO STOLL. (Black type): We must have a clear opportunity to contact the intermediary. We cannot do that with police surrounding the house. If they do, you can take our word that we will know of this fact in advance, and then we will make no effort to collect the money, but will then do what we have said we would about Stoll.

709 "STARTING THE DAY AFTER THE KIDNAPPING (Red type): WE GIVE YOU 5 (five) DAYS (not including a Sunday) TO GET THE MONEY INTO THE HANDS OF THE INTERMEDIARY. THIS MEANS THAT IT MUST BE SENT ON THE FOURTH DAY IN ORDER TO ARRIVE ON THE FIFTH. (Black type): Do this sooner, if possible, as the sooner Stoll is returned, the easier it will be on him.

"THEN, JUST AS SOON AS WE GET THE MONEY INTO OUR HANDS, STOLL WILL BE

Testimony of Berry V. Stoll

RELEASED UNHARMED. To this we give you our word.

"We will call Express Agency in Nashville and see when your package arrives. (We will call from a pay station far from where we hold Stoll.)

"Do not take the serial numbers of the money. (Red type): IF YOU MAKE ANY PUBLICITY OF THIS CASE AFTER STOLL IS RETURNED, OR TRY TO CATCH US IN ANY WAY AFTERWARDS, WE WILL SHOOT DOWN YOUR FAMILY FROM OUR CAR WITH A 30-30 RIFLE. (Black type): Do not waste our time or yours trying to reduce the ransom. You can get \$30,000 or else—.

710 "THERE CAN BE NO OTHER NEGOTIATIONS. WE DO NOT HAVE TIME TO BARGAIN. IF YOU DELAY AND STALL FOR TIME, WE HAVE TOLD YOU OUR POSITION, AND WHAT MUST HAPPEN TO STOLL. We have no other alternative if we do not receive the money. THIS JOB IS SO ARRANGED THAT NO ONE OUTSIDE THE STOLL FAMILY WILL KNOW WHAT HAS HAPPENED AT THE START. It is for you to keep it that way.

"Explain Stoll's absence as illness or say he is out of town.

(Red type) "IF THIS IS GIVEN TO POLICE OR PRESS, NOTHING CAN SAVE STOLL.

(Black type)

"NAME OF INTERMEDIARY (to be filled in by Stoll (scratched out in pen and ink).

"Mr. T. H. Robinson

"Street 1716 Ashwood Avenue

"Town NASHVILLE, TENNESSEE

"WE ASSURE YOU THAT PACKAGE OF MONEY WILL NOT GET INTO WRONG HANDS, SO DO NOT TRY TO CONTACT THIS MAN, AS IT MAY UPSET PLAN OF PAY-OFF."

Testimony of Berry V. Stoll

Q. Now, Mr. Stoll, after this ransom note was read, were the necessary steps taken to carry out the instructions of the kidnapper?

A. They were.

(At this point the ransom note is handed to the Reporter and filed.)

711 Q. When next did you see your wife, Mr. Stoll?

A. Five or 6 days later.

Q. On the afternoon of her return?

A. Yes, on the afternoon of her return when she came back with Rev. Dr. Clegg, from Indianapolis, and Mrs. Clegg, and the Department of Justice men.

Q. That was on October 16, 1934?

A. Yes.

Q. Now directing your attention to the day of the kidnapping, October 10, 1934, did you see your wife on that day?

A. Not in the afternoon. I did in the morning before I left for work.

Q. What was her physical condition on the morning of October 10th, 1934 when you left for work?

A. Well she had a cold and she had not been feeling very well due to that cold, but outside of that she was all right.

Q. On October 16, 1934, when your wife was returned to you, tell the Court what her physical condition was?

Mr. Hogan: That is objected to on the same basis as heretofore given.

The Court: Objection overruled and give you an exception.

712 A. She was in a horrible shape. Her lips were torn and bleeding from where the adhesive tape had been, and raw. There was horrible blood all over her forehead. Her head was covered with blood and she was completely unnerved and completely shattered.

Q. We will leave the subject of her physical condition, Mr. Stoll. Who was at your premises when she returned?

A. The two Department of Justice men and myself, Mr. Wynn and Mr. Kerr. Everybody else had been ordered away by the Department of Justice.

Testimony of Berry V. Stoll

Q. So only the three of you were there at your home?

A. Yes.

Q. Upon your wife's return, at the time of your wife's return, was any money received by you, Mr. Stoll?

A. Yes, she brought back \$470.00, as I recall it.

Q. Did you check this amount of money against any list or with anyone?

A. Yes, we checked it against the original list of the moneys we had sent for ransom and we checked that list. I checked it with Mr. Connelly, as I recall, with the Department of Justice.

Mr. Hogan: If Your Honor please, I don't know that there is any testimony that he had any part in pre-
713 paring this list.

The Court: Well the list has been introduced and the list can be produced and this witness asked if he assisted in checking that list, if you think that is necessary.

Mr. Brown: Well then we will introduce that through Mr. Connelly.

Q. Did you deliver this money to Mr. Connelly?

A. Yes.

Mr. Brown: That is all.

Cross-examination by Mr. Hogan.

Q. Mr. Stoll, did you have a phone conversation over the phone the morning after Mrs. Stoll was returned about some money? About the amount of money that was returned by your wife?

A. A phone conversation about the amount of money returned?

Q. Yes?

A. I may have had, but I don't recall.

Q. Was the maid there the morning after your wife was returned?

A. She came back the following day after her
714 return. She was not there at the return. There were only the two Department of Justice men and myself and the dog when she got back.

Q. Why were all these people cleared away from there?

Testimony of Berry V. Stoll

A. The Department of Justice thought it best. They gave orders and we followed their instructions.

Q. Was Mr. Fowler Woollet in your employ? *

A. He was.

Q. And Mrs. Ann Woollet, his wife, the maid?

A. Yes, she was.

Q. Was Mrs. Woollet there the morning after Mrs. Stoll's return?

A. I don't recall whether it was the morning after—they came later in the day. They went over and stayed with my wife's mother and father. They went over to their house where they had room for them to sleep and we did not want anyone on the place that night and so everyone left.

Q. I will ask you to state if on the morning after your wife's return, which would be October 17, 1934, if you didn't have a phone conversation from your home and in which you advised the party on the other end of the line that Mrs. Stoll had returned and brought home with
715 her \$25,000?

A. I am positive I had no such conversation. I did not.

Mr. Brown: I would like to know the name of the person he is supposed to have had such conversation with if he knows.

The Court: „Can you say whether the call came to him, or whether he made the call? Or who it was from and who it was to?

Mr. Hogan: I asked him if he was not talking over the phone in his residence—

The Court (Interrupting): To whom?

Mr. Hogan: To that party I do not know. I am asking him if he had such a conversation.

The Court: Do you mean that you don't know or are you not willing to state?

Mr. Hogan: I don't know.

The Court: Well if he doesn't know, that is all he can say.

A. I don't know of any such conversation

Mr. Hogan: That is all.

Testimony of William S. Speed

716 WILLIAM S. SPEED was called as a witness by the government, and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. William S. Speed.

Q. Where do you live?

A. 2828 Lexington Road, Louisville.

Q. Directing your attention to October 10, 1934, the day of the kidnapping of your daughter, I will ask you if at any time during that day you visited your daughter's home on Lime Kiln Road?

A. Yes; after we heard of the kidnapping.

Q. I will hand you government Exhibit No. 33, being the ransom note, and ask you if you saw or there was read to you on that occasion that ransom note?

A. It was read to several of us there on that late afternoon or evening—evening I think it was.

Q. With reference to the amount of money called for, \$50,000, I will ask you who took steps, if any steps were taken, to raise that amount of money?

A. I was raising the money.

Q. Through what bank was that arranged for?

717 A. Through the Citizens Union—and the Fidelity.

Q. How much money was raised?

A. \$50,000.

Q. Was that money paid over in accordance with the terms of the ransom note?

A. It was, exactly, I think.

Q. Now directing your attention to any specific period, was the \$50,000 or any part thereof at any time returned to you?

A. Yes. I received about \$46,000-some-odd—

Q. (Interrupting) Did you say Forty-six Thousand?

A. I mean \$4600.00—no, I wish it was \$46,000. I have got the date here if I can use the memorandum I made of that.

Q. That's all right.

Testimony of William S. Speed

A. \$4687.64 on September 22, 1936.

Q. On what date?

A. September 22, 1936.

Q. That of the amount of the \$50,000 that you caused to be paid over, that is the only sum of money that has been returned to you?

A. No, there was \$506.00 in addition to that. I think practically all of that was brought down by Mrs. Stoll when she came home—making a total of \$5193.64.

718 Q. With that exception, did you at any time receive any other money from this ransom money?

A. No.

Q. From whom, or from what agents if you can recall their names, or if you can identify them more than that, did you receive the money?

A. Did I what?

Q. From what agents of the government did you receive that \$4600.00?

A. That \$4687.00 was received from O. C. Dewey, Special Agent in Charge of the FBI.

Q. Here at Louisville?

A. Yes.

Mr. Brown: Your Honor, I believe the condition of the room, etc., has been sufficiently gone over.

Cross-examination by Mr. Hogan.

Q. Mr. Speed, where were you living at that time?

A. 2828 Lexington Road.

Q. Do you still live at that residence?

A. I do.

Q. What is your business?

A. I am connected with the Louisville Cement Company, also the Black Star Corporation, and the
719 Pioneer Coal Company.

Q. Does one of your companies operate the cement plant at Speed, Indiana?

A. Yes.

Q. You have a considerable interest in that plant, I believe?

A. Yes.

Testimony of William S. Speed

Q. And are you an officer in the rest of these companies?

A. Well I am Chairman of the Board of the cement company; and recently I was made president again of the two coal companies. My younger cousin was president of those two companies, and he died suddenly of a heart attack less than 2 years ago.

Q. In connection with the operation of those coal companies, do you have mines in the Eastern part of Kentucky?

A. Yes; we have mines in Eastern Kentucky.

Q. And you have your sales outlets here at Louisville?

A. The main sales office is here in Louisville.

Mr. Hogan: That is all.

720 JOHN E. TARRANT was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. John E. Tarrant.

Q. Where do you live?

A. On Lightfoot Road, Louisville, Kentucky.

Q. In what business profession are you in?

A. I am a lawyer.

Q. During the year 1934 were you a lawyer here in the City of Louisville?

A. I was.

Q. Mr. Tarrant, directing your attention to October 10, 1934, and the days immediately following—

Mr. Brown: Your Honor, I think I will omit with this witness any description of the room and things like that. I think that has been sufficiently gone into.

Q. (Continuing) I will ask you if at the request of Mr. William S. Speed or anyone else, did you participate or take any part in the preparation of the money as called

Testimony of John E. Tarrant

for by the ransom note left at the Berry Stoll home by the kidnapper?

721 A. I was present at the Fidelity & Columbia Trust Company when certain of the junior executives of that bank were taking the serial numbers of the bills.

Q. Now, after taking the serial numbers of the bills and listing them, what was done with this money?

A. This money was wrapped in a brown paper package, addressed to Mr. Robinson, Sr. in Nashville, Tennessee, giving my name as the sender, marked up in the corner of it was taken to the express office and delivered to the express company for transmittal to Nashville.

Q. Did you take it to the express office?

A. I did.

Q. I will hand you a copy of a waybill and ask you if that is the duplicate copy of the waybill that you received indicating the transmittal of that money by the railroad express agency?

A. Yes it is.

Mr. Brown: I would like to introduce that as government's Exhibit No. 42.

(A copy of the waybill above described was handed to the Reporter; marked government exhibit No. 42, and filed.)

Cross-examination by Mr. Hogan.

722 Q. Mr. Tarrant, who accompanied you to the railway express office?

A. Mr. Menefee Wirgman, President of the Fidelity & Columbia Trust Company. He was in my car, Mr. Hogan, and some of the FBI men were in a car behind us as guards. Who they were I do not remember at this time.

Q. Do you know the number of the FBI guards or agents?

A. No I don't remember. There was a car that came right along with us—behind us.

Q. A car partly or mostly filled with FBI Agents?

A. There were one or more in there; yes, sir.

Q. And to what office of the railway agency did you take this money?

Testimony of John E. Tarrant

A. We first took it down to Seventh Street, but it was so late at night that they were not prepared to take it over down there so then we took it over to 10th Street, back of the L. & N. Station.

Q. Tenth and Maple?

A. I think that was it.

Q. And you registered it or left it there at the railway express office?

A. That is correct.

Q. Did the FBI Agents stay there with it?

A. Mr. Hogan, I can't remember that. I don't know. I am inclined to think that one of them may have gone down with it, although I don't really know. I can't
723 answer that. I left it there and then my connection with it was over. I had a receipt from the express office and I went on home.

Q. And did you participate any further in the handling of this matter?

A. No, sir.

Q. I believe you had some trouble with some photographers down around here?

A. Unfortunately I did, Mr. Hogan.

Q. Weren't you an official photograph smasher around here for a while?

Mr. Brown: We object to that.

The Court: I don't think that has anything to do with this case.

A. I made a bad mistake there.

Mr. Hogan: That is all.

ROBERT E. CREAGER, was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Robert E. Creager.

724 Q. You now live at Ft. Lauderdale, Florida?

Testimony of Robert E. Creager

A. I do.

Q. In what branch of the service are you?

A. Coast Guard.

Q. How long have you been a United States Coast Guard?

A. Fourteen months.

Q. In October 1934 where were you employed?

A. Louisville Police Department, here at Louisville, Kentucky.

Q. In what capacity?

A. Patrolman Clerk.

Q. Did you have any special assignment?

A. I was identification clerk.

Q. On October 10, 1934, were you on duty?

A. I was.

Q. Did you receive any orders on that day directing you to any particular place?

A. I did.

Q. What orders did you receive?

A. I received orders to go to Mr. Berry Stoll's residence on Lime Kiln Lane.

Q. Well, did you go there?

A. I did.

725 Q. With whom did you go?

A. I went part of the way with Mr. Neville Miller, the Mayor at that time, and the rest of the way I went with Mr. Stoll.

Q. About what time did you arrive at the Stoll residence on Lime Kiln Road?

A. About 6 o'clock p. m.

Q. What was your particular purpose in being there.

A. To take finger prints that had been left there in connection with the reported kidnapping.

Mr. Hogan: That is objected to about kidnapping.

The Court: Did you say "reported kidnaping"?

Witness: Yes, I did.

Mr. Hogan: Then my objection is withdrawn.

Q. What procedure did you follow in attempting to secure finger prints there?

A. I was ushered into the house and met the maid

Testimony of Robert E. Creager

and asked her to take me to the different places where the man that was reported to have been in there and show me the articles that he had handled. She took me to the kitchen and showed me a water glass on the drainboard. I processed that glass and while I was in the kitchen Mr.

Berry Stoll brought me a letter and a sealed envelope
 726 and he was holding this letter with a handkerchief, and I saw some writing on this envelope and I got a newspaper and wrapped this letter in the newspaper. Then from there—

Q. (Interrupting) I show you this envelope, government Exhibit No. 33, and ask you if you have seen that envelope before?

A. I have.

Q. Where did you first see that?

A. In the kitchen of Mr. Berry Stoll's residence on Lime Kiln Lane.

Q. Is that the envelope that he handed you?

A. It is.

Q. And what did you do with it?

A. I wrapped it in a newspaper and carried it with me until I had completed my investigation.

Q. Now you say you processed a glass. Explain to the jury what you mean by processing?

A. I used a white powder, a manufactured powder dusted on there with a camel's hair brush—

Mr. Hogan (Interrupting): I am forced to interpose an objection because he is about to testify as a finger print expert and I don't believe his qualifications have been given.

The Court: You may qualify him.

727 Mr. Inman: I am not asking him to testify as a finger print expert.

The Court: Well you can ask him how long and what experience he has had doing that kind of work.

Q. How long had you been with the police department at that time?

A. September 26, 1926.

Q. How much experience had you had in processing articles for finger prints?

Testimony of Robert E. Creager

A. Since February 1, 1929.

Q. Where did you learn that procedure?

A. I learned it in the Bureau of the Louisville Police Department.

Q. Had you had much or little experience prior to October 10, 1934, in processing articles for finger prints?

A. I had had much.

Q. Are you familiar with the manner in which articles were processed and finger prints lifted?

A. I was.

Q. And did you follow that procedure in this case?

A. I did.

Q. Now as to the glass did you secure any finger prints there?

A. I did not.

728 Q. Well what other parts of the house or furniture did you process?

A. I went from the kitchen to a hall on the northerly direction. I saw a telephone lying on the floor that had been disconnected from the wall.

Q. Did you examine the wires on that telephone?

A. I did.

Q. What was the condition of those wires?

A. They had been disconnected.

Q. Did you process that telephone?

A. I did.

Q. And the box?

A. I did.

Q. And did you use the same procedure in processing that telephone and box?

A. I did.

Q. What was the result of your examination of that box and telephone?

A. I did not find any on the telephone. I processed the box and found several latent finger prints on it.

Q. What did you do then?

A. I photographed them.

Q. Do you have those photographs?

A. I do.

729 Q. Will you produce them?

Testimony of Robert E. Creager

A. Yes; here they are.

Q. Are these the original photographs?

A. They are.

Mr. Inman: I would like to file these photographs as government Exhibit No. 43.

(The photographs above identified were handed to the Reporter, marked government's exhibit No. 43, and filed.)

Q. Where was that telephone box when you examined it, Mr. Creager?

A. On the floor.

Q. Was that where it had been connected, or could you tell where it had been connected?

A. I didn't understand you.

Q. Where had it been connected at the time you found it? At the place you found it?

A. Right at the box.

Q. I mean, had the telephone box been removed from its connection with the wall or not?

A. It had.

Q. Did you go to the second floor of the Stoll residence?

A. I did.

Q. I will ask you whether or not you entered
730 the room immediately to your left as you go upstairs, the guest room?

A. I did.

Q. What did you see there?

A. I saw a bed and a chair and a dresser in this room.

Q. What was the condition of the bed?

A. It was mussed.

Q. Were there any spots on it or not?

A. There were.

Q. What were they?

A. Two spots that appeared to be blood spots on the bed.

Q. About what size?

A. The largest one was about 10 inches in diameter; and the smaller one was about 5 or 6 inches in diameter.

Q. What did you do with the envelope that Mr. Stoll

Testimony of Robert E. Creager

gave you in the kitchen of that home?

A. I turned it over to Capt. Messmer.

Q. John I. Messmer?

A. That's right.

Q. By whom was he employed?

A. The Louisville Police Department.

731 Cross-examination by Mr. Hogan.

Q. Did the Mayor contact you or was he already waiting to go along with you?

A. He contacted me.

Q. Did you wrap the note and the envelope in a newspaper?

A. I wrapped the envelope in a newspaper. It was closed and I can't tell you what was inside of it. I do know that it contained more paper, but what was inside, I did not know.

Q. All you know about is the envelope?

A. That's right.

Q. You are not prepared to say what was contained in the envelope, if anything?

A. No.

Q. Who handed you the envelope?

A. Mr. Berry Stoll.

Q. Were there any other people in the house than Mr. Berry Stoll?

A. There were.

Q. How many?

A. Well, I saw four.

Q. Did you know any of them?

732 A. I knew the two county police at that time, but I have forgotten their names now.

Q. Were there two county policemen who had arrived there ahead of you and the Mayor, etc.?

A. That is right.

Q. I believe you said Mr. Charles Stoll was in the car or picked you up later?

A. Yes.

Q. Was he a brother of C. C. Stoll?

A. No; he was a brother to Berry Stoll.

Testimony of Robert E. Creager

Q. Are those county officers still alive and on the county police force, or do you know what has happened to them?

A. I don't know.

Q. What were they doing there?

A. They were just standing there when I got there.

Q. Were they investigating?

A. No.

Q. Just standing still?

A. They were standing there talking to someone. I don't remember who they were talking to.

Mr. Hogan: That is all.

733 CAPTAIN JOHN I. MESSMER, was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. John I. Messmer.

Q. Are you now a Captain in the United States Army?

A. Yes, sir.

Q. Where do you live?

A. 3141 Texas, Louisville.

Q. In October 1934 where were you employed?

A. By the City of Louisville, in the detective bureau, as a detective, sergeant.

Q. Were you assigned to any particular duties?

A. At that time, the *modus operandi* file.

Q. On October 10, 1934, were you on duty?

A. Yes, sir.

Q. On that day did you receive any orders to go to any particular place?

A. Yes, sir.

Q. Where did you go?

A. In the neighborhood of 5:30 p. m., Mayor Neville Miller came to the Detective Bureau and told me to go with him.

Testimony of Captain John I. Messmer

734

Q. And did you go with him?

A. Yes I went to the Stoll residence on Lime Kiln Lane, in Jefferson County, Kentucky.

Q. About what time did you go there?

A. Well some time between 5:30 and 6:30 o'clock.

Q. Did you enter the Stoll Residence?

A. Yes; I did.

Q. When you entered, where did go first—that is, to what room?

A. I first went upstairs to the bed room to the left of the steps as you go up.

Q. Did you enter that room?

A. Yes, sir.

Q. What did you see in that room?

A. It was a bed room, with one bed, and a dresser and a chair and I think a chest of drawers and on the bed was a pink bedspread, and it had two fairly good-sized spots of blood on it. Underneath the bed I found what later developed to be a piece of pipe, wrapped in brown paper—

Q. (Interrupting) I show you government exhibit No. 34, and ask you if that is the pipe that you found there?

A. Yes, sir.

Q. When you picked it up, how did you pick it up?

A. By each end this way (indicating).

735

Q. Then what did you do with it?

A. I then placed it in a closet in the room to keep anyone from handling it with the idea of finger prints in mind. We did not want to destroy any finger prints that were on there or put any on.

Q. How long did you leave it there in that closet?

A. Possibly a half an hour while I made an examination of the room.

Q. Were you there in the room all the time?

A. Yes, sir.

Q. When you left the room what did you do with the pipe?

A. I took it with me.

Q. And where did you take it?

A. I went from that room down to the kitchen where I met Sgt. Creager who was working on a water glass, I

Testimony of Captain John I. Messmer

think, trying to get finger prints off of it.

Q. Did Sgt. Creager give you anything?

A. Yes he did. He gave me, a flat—well it later developed to be an envelope. It was then wrapped in a newspaper and he said I have the—

Q. (Interrupting) Not what he said. I show you government Exhibit No. 33 which is an envelope, and ask you if that is the envelope Sgt. Creager gave you?

736 A. Yes, sir.

Q. Was that sealed at that time?

A. Yes sir, it was.

Q. Now did you later open that envelope?

A. Yes, sir, I did.

Q. Where?

A. In the dining room of the Stoll home.

Q. And when was that opened?

A. Probably a half an hour after I received it. About a half an hour after Sgt. Creager gave it to me.

Q. At the time the envelope was opened, who was present?

A. Mrs. Speed, Mr. Speed—I can't recall all of them. I am sure they were all members of the Stoll family. The Agents who were there before the note was opened I remember very distinctly making sure everyone in the room was members of the Speed and Stoll families and the agents.

Q. And the Department of Justice Agents?

A. Yes, sir.

Q. When you opened the envelope did you find anything in it?

A. Yes, sir.

737 Q. I'll show you also what is designated Government Exhibit No. 33 and ask you to tell the jury if you have seen those two pages before.

A. Yes, sir. These were the two pages that were in the envelope when I opened it.

Q. Did you remove them from this envelope?

A. I did, sir.

Q. What did you do?

A. Read them to those present in the dining room.

Testimony of Captain John I. Messmer

Q. What did you then do with that letter?

A. It was returned to the envelope and re-wrapped in the newspaper, taken to Police Headquarters where I photographed it, and then it was turned over to the Federal Bureau of Investigation agent.

Q. I show you these photographs and ask you to tell the jury what they are.

A. They are the photographs that I made of these two pages.

Q. The ransom note?

A. The ransom note; yes.

Q. Have you compared these photographs with the ransom note you have in your hand?

A. Yes, sir. In addition to making them myself, I photographed and processed them myself.

Q. Would the photograph show black and red or
738 only black in the photograph?

A. It would show only black and white.

Q. What did you do with the ransom note after you photographed it?

A. It was delivered to Agent Kerr of the F.B.I.

Q. Along with the envelope?

A. Yes, sir.

Q. When was that done, Capt. Messmer?

A. That was done—I think the photographing was started probably about 8:00, or something like that, in that neighborhood, 8:00 p. m., and I think it was around probably—Oh, maybe between 9:00 and 10:00 that the note was turned over to the Federal Bureau of Investigation.

Q. I will ask you to file these photographs of the ransom note with your testimony as Government Exhibit No. 44.

A. I do.

(The said photographs are filed with the record as Government Exhibit No. 44.)

Q. Did you examine the telephone or see the telephone in the Stoll residence?

A. I saw it, but made no examination of it.

Q. What was its condition when you saw it?

Testimony of Captain John I. Messmer

A. Well, it was disconnected.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Is that the only part you took in the investigation?
739

A. Practically, yes, sir.

Mr. Hogan: That's all, Captain.

STUART R. KERR, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Stuart R. Kerr.

Q. Where do you live, Mr. Kerr?

A. 203 E. Greenway Boulevard, Falls Church, Virginia.

Q. Where are you employed?

A. In Washington, D. C., by the Co-ordinator of Inter-American Affairs.

Q. In October, 1934, where were you employed?

A. The Federal Bureau of Investigation.

Q. Of the United States Department of Justice?

A. Correct.

Q. On October 10th, 1934, were you in Louisville, Kentucky?

A. I was.

Q. On that day did you receive any call concerning the Stoll residence?

A. I did.

Q. As a result of that call, where did you go?
740

A. Proceeded to the Stoll residence on Lime Kiln Road.

Q. What time did you arrive there, Mr. Kerr?

A. Approximately 6:00 p. m.

Q. Did you go to the guest room or the bed room immediately to the left at the head of the stairs?

Testimony of Stuart R. Kerr

A. I did.

Q. What did you see there?

A. You mean the furniture or the appearance of the furniture.

Q. The appearance of the furniture. What did you see there?

A. I observed at least two blood stains on the cover on the bed.

Q. How long did you stay in that room?

A. Probably ten or fifteen minutes.

Q. And what other part of the house did you see or examine?

A. That evening I saw the kitchen and the dining room, and incidentally the living room also.

Q. Did you see Capt. Messmer?

A. I did.

Q. Did you go any place with him?

A. I did.

Q. Where?

741 A. The Louisville Police Department.

Q. And at the Louisville Police Department, did Capt. Messmer turn over to you anything?

A. He turned over to me the ransom note.

Q. Had you seen that ransom note before that?

A. I had.

Q. Had you heard it read?

A. I had.

Q. Where?

A. In the dining room of the Stoll residence.

Q. Who read it?

A. Captain—Sergeant Messmer.

Q. He was a sergeant at that time?

A. That's correct.

Q. That's the Captain in the Army who was here to-day, is that right?

A. That's right.

Q. When Capt. Messmer turned that note over to you, I'll show you Government Exhibit No. 33 and ask you if that was the note he turned over to you.

A. Yes, that's the note.

Testimony of Stuart R. Kerr

Q. What did you do with the ransom note and envelope?

A. I prepared a letter of transmittal to the Bureau and enclosed it.

Q. What do you mean by that?

742 A. A letter setting forth the summary facts of the case up to that date.

Q. You say to the Bureau. Explain to the jury.

A. To the Federal Bureau of Investigation in Washington. I enclosed the letter of transmittal and the original note and envelope in a franked Government envelope, took it to the railway depot and mailed it to the Bureau in Washington for examination.

Q. Is that where the technical laboratory is located?

A. That's correct.

Q. Where did you go then?

A. After mailing the note I returned to the Stoll residence.

Q. How long did you stay there?

A. Until the time Mrs. Stoll was returned, which was October 16th, I believe.

Q. You were there continuously, is that right?

A. Yes, sir.

Q. After Mrs. Stoll returned, did you immediately interview her?

A. No.

Q. Did you see her closely or not?

A. I saw her enter the house, and at that time I left the house and returned to Louisville.

Mr. Inman: You may ask the witness.

743 Cross-examination by Mr. Hogan.

Q. Mr. Kerr, Capt. Messmer, who just left the stand, were you acquainted with him rather generally while he was in the detective office of the City of Louisville?

A. I had had some contact with him on official matters.

Q. Did he occupy any special office with the City Detective Office? Did he do any special types of work?

A. I believe he was at that time setting up certain police laboratory facilities. I am not in a position to say

Testimony of Stuart R. Kerr

how far he had gone.

Q. Didn't he have quite a reputation as a chemist?

A. That I wouldn't know.

Q. Did you ever work with him on any other case, other than this one?

A. No.

Q. Did you know at that time whether or not he had any finger-print devices or access to them?

A. No, I can't say that I know what equipment he may have had.

Q. Did the City of Louisville at that time have any finger-printing devices or chemicals?

The Court: If the witness knows. He was not employed by the City.

Q. Yes, if you know.

744 A. I assume they had, but I don't know what equipment they had.

The Court: Never mind the assumption. Just tell what you know, Mr. Kerr.

The Witness: I don't know.

Q. What day was Mrs. Stoll returned?

A. Reasonably early in the evening. It was after dark. The exact time I can't remember.

Q. Now, who had been staying there at the Stoll residence except you, during her absence?

A. Special Agent Wynn and the representative of the Louisville Police Department.

Q. Do you know his name?

A. I don't remember it.

Q. The maid was there, I believe.

A. For a portion of the time.

Q. And her husband?

A. For a portion of the time also.

Q. Did they leave there?

A. I believe they left after the elapse of some days.

Q. Do you know why they left?

A. No, I can't say I do.

Q. Didn't the F.B.I. and didn't you as an agent of the F.B.I. request them to leave when it was known that Mrs. Stoll was coming back?

Testimony of Stuart R. Kerr

A. I didn't.

745 Q. Did F.B.I. Agent Wynn order them to leave, the maid and her husband?

A. Not to my knowledge. I don't know what he may have done.

Q. Did this representative of the Louisville Police Department order the maid and her husband to leave when it was known Mrs. Stoll was to return?

A. I have no such knowledge.

Q. Do you know who it was that arranged for the maid's leaving and the husband's leaving?

A. No, I do not.

Mr. Hogan: That's all.

The Court: Members of the jury, we will take a short recess. Make yourselves comfortable. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence. The Marshal will announce a ten minute recess.

A short recess was taken, after which the hearing was resumed as follows:

HARRY J. HILPP, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

746 A. Harry J. Hilpp.

Q. Where are you employed?

A. Railway Express.

Q. In what capacity.

A. Depot Agent.

Q. How long have you been employed by the Railway Express?

A. Twenty-six years.

Q. Were you on duty at the Railway Express Agency the early morning of October 12th, 1934?

A. Yes, sir.

Testimony of Harry J. Hilpp

Q. On the early morning of October 12th, 1934, did Mr. John Tarrant with other men come to the Railway Express office?

A. Yes, sir, about 1:00 o'clock.

Q. What office of the Express Agency was that?

A. Tenth and Maple.

Q. What did they do there?

A. They brought a package.

Q. Did you receive that package for the Express Company?

A. Yes, sir; I did.

Q. In what department were you working at that time?

A. Well, it was a little office there. It was an out-bound depot.

747 Q. Were you the depot agent?

A. I was the depot agent.

Q. Were you in charge of all operations there?

A. I was; yes, sir.

Q. Is the money department and valuables department there?

A. Not there, there wasn't at that time, but we received shipments at that depot.

Q. I'll show you Government Exhibit No. 42 and ask you to tell the jury what that is.

A. That's a receipt that we issue to the customers who bring a package to the depot.

Q. What is the waybill number?

A. Waybill No. 3441.

Q. What is the date of that receipt?

A. October 12th, 1934.

Q. What time was that receipt issued?

A. 1:00 a. m.

Q. And to whom was it issued? Who is the shipper?

A. The shipper is J. E. Tarrant.

Q. And the consignee?

A. T. H. Robinson.

Q. What was shipped?

A. A package, seven pounds.

Q. What value?

A. Ten dollar value on here.

Testimony of Harry J. Hilpp

748

Q. To what city was that package directed?

A. Nashville, Tennessee.

Q. What did you do with that package, Mr. Hilpp?

A. Placed it in a safe.

Q. What sort of safe?

A. Little portable safe about 20 inches long, 15 inches wide, and about 14 inches deep.

Q. How was that safe locked?

A. It was locked and a little wire seal put through it.

Q. How was the seal placed?

A. What is it?

Q. Was the seal pressed in any way?

A. There is a seal that goes through a little lead seal—a wire goes through two little holes, then back through the lead seal and then pressed together.

Q. Anything else placed in that safe but the package?

A. Nothing but the package.

Q. Did you ever see the contents of that package?

A. No, sir.

Q. What did you do with the safe?

A. Turned it over to Messenger Caldwell, who is a messenger on L. & N. No. 3 between Louisville and Nashville.

Mr. Inman: That's all.

749

Cross-examination by Mr. Hogan.

Q. How many F.B.I. agents accompanied that safe with this package?

A. I only saw two, I believe.

Q. Did they accompany that safe?

A. To the depot.

Q. It was at the depot that you turned it over to Messenger Caldwell, was it not?

A. Yes, sir.

Q. And were those two F.B.I. agents present when you turned them over to Caldwell?

A. I believe they were. I know Mr. Hurley was.

Q. Do you know the name of the other agent?

A. I believe his name was Tarrant or Torrant, or something like that.

Testimony of Harry J. Hilpp

Mr. Inman: That was the man who shipped the package?

The Witness: That was the man who shipped it.

Q. Did Hurley stay with that safe when you left there?

A. Hurley went with the safe.

Q. He was with it the last time you saw it?

A. Yes, sir. He got in the car with it.

Mr. Hogan: That's all.

750 Redirect Examination by Mr. Inman.

Q. The other man you thought was an F.B.I. agent was the man who shipped this package, was he?

A. Yes, sir.

Mr. Inman: That's all.

JAMES R. CALDWELL next called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. James R. Caldwell.

Q. Where are you employed?

A. Railway Express Agency.

Q. How long have you been employed there?

A. Twenty-four years.

Q. On October 12th, 1934, were you employed as a messenger?

A. Yes, sir.

Q. On what train?

A. Train 3—L. & N. 3.

Q. Between what points?

A. Louisville and Nashville.

751 Q. On the morning of October 12th did you receive any safe from the depot agent Hilpp at Louisville?

A. I received an extra safe; yes, sir.

Q. An extra safe?

Testimony of James R. Caldwell

A. Yes, sir.

Q. Prior to your receiving that safe in your custody, had you seen it or seen anyone doing anything with that safe?

A. Well, I checked out for the run that leaves at 1:20. They put a package in it. There was a package put in the safe.

Q. Only one package?

A. That's all.

Q. What was done with the lock on that safe?

A. As far as that part, I can't remember about how the key was handled or anything else, whether it was put in a sealed envelope or not, but I handled it on the value record, on my book is a safe and key, is the way I carried it.

Q. What did you do with that safe and its contents?

A. Turned it over to the money department at Nashville.

Q. Did you go to Nashville with it?

A. Yes, sir.

Q. When did you turn it over to the money department at Nashville?

A. That same morning about 8:00 something.

Q. 8:00 something on the morning of October 12th?

A. Yes, sir.

Q. 1934?

A. Yes, sir.

Q. Were records kept of that transaction?

A. Well, we turned our records over to the route agent then, the book 5024 we used the records on.

Q. Form 5024?

A. Yes, sir.

Q. Did you sign for that safe?

A. It was wrote up on my value sheet; yes, sir.

Q. And you signed for it, is that right?

A. Yes, sir.

Q. Then when you turned it over at Nashville did someone sign a receipt for that?

A. Yes, sir; the money department down there.

Q. What did you do with those records?

Testimony of James R. Caldwell

A. It was turned in to the route agent, to my route agent, Mr. Shepard.

Q. In the usual course of business?

A. Yes, sir.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Were you on the train when this safe was
753 delivered to you, Mr. Caldwell?

A. The safe was in my car as I went on the train. It went over on the truck with me, with my other safe.

Q. Where were you when you first saw this safe?

A. Checking out over at Tenth and Maple.

Q. Who was in charge of it at that time?

A. Mr. Hilpp—Mr. Harry Hilpp.

Q. Did anybody else have any connection with it or was anybody else present there?

A. Well, there were some men around I didn't know. A fellow, Mr. Ridge, Mr. John Ridge, he was extra guard on this safe.

Q. Was Mr. Ridge an employee of the Railway Express?

A. Yes, sir; special officer.

Q. Was he accompanying the safe?

A. Yes, sir.

Q. And by its side all the time?

A. Yes, sir.

Q. When you saw the safe, had it been closed and locked?

A. I saw the package before it was put in the safe.

Q. Did you see the safe closed and then locked?

A. Yes, sir.

Q. Were any seals put on it?

A. I say, the best I remember, I don't know about the sealing part and the key, how it was handled.

754 Q. Did Special Agent Ridge accompany you and accompany this safe from Louisville to Nashville?

A. Yes, sir; all the time.

Q. Who else accompanied that safe?

A. One of the federal men, Mr. Hurley.

Testimony of James R. Caldwell

Q. Anybody else?

A. No, sir.

Q. Just the company's Special Agent Ridge and F.B.I. Agent Hurley?

A. Yes.

Q. And you, of course.

A. That's right.

Mr. Hogan: That's all.

JOHN M. RIDGE called as a witness in behalf of the Government, being duly sworn, was examined by Mr. Inman and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. John M. Ridge.

Q. Where are you employed, Mr. Ridge?

A. Railway Express Agency.

Q. In what capacity?

A. As an investigator, and my title is Assistant Special Agent.

755 Q. Were you employed in that capacity in October of 1934?

A. I was.

Q. On the early morning of October 12th, 1934, were you at the Tenth Street Depot?

A. I was.

Q. What time did you arrive there?

A. About 12:00 o'clock, or about 12:30—between 12:00 and 12:30.

Q. Did you see Mr. Tarrant there that night—that morning?

A. I saw a man with Mr. Hurley, that I later found out was Mr. Tarrant.

Q. Did you know Mr. Hurley?

A. Yes. I had known him before.

Q. And by whom was he employed?

A. How is that?

Testimony of John M. Ridge

Q. By whom was he employed?

A. F.B.I. at that time.

Q. What happened there that morning after Mr. Hurley and Mr. Tarrant came to the depot?

A. Well, I saw them put a package in the safe and lock it, and I was told by my General Agent—

Mr. Hogan: Not what you were told, Mr. Ridge.

The Witness: I am speaking about how I come
756 to go with the safe.

The Court: Tell what you did. Don't tell what you heard.

Q. Did you go any place with that safe?

A. I went to Nashville with it.

Q. Who else was with you?

A. Mr. Hurley and Mr. Caldwell.

Q. Mr. Caldwell, the messenger?

A. Caldwell was the messenger.

Q. What time did you leave Louisville?

A. 1:2—.

Q. About what time did you arrive at Nashville?

A. I believe we were on time at 7:30, or close to that.

Q. In the morning?

A. That same morning.

Q. What did Mr. Caldwell do with that package then?

A. He turned it over to our officials at Nashville.

Q. Did you see it any more?

A. After that?

Q. Yes.

A. I saw it when it was taken to the Eighth Avenue office at Nashville.

Q. Eighth Avenue office of what company?

A. Railway Express Agency.

Q. Did you see it after that?

757 A. The package?

Q. Yes.

A. It was taken out and put on the shelf.

Q. In what department?

A. In the on hand department.

Q. After that what happened?

A. After that I was relieved of my duties.

Testimony of John M. Ridge

Q. Did you then return to Louisville?

A. Returned to Louisville on No. 6, about 11:30 I think it was, that day.

Q. That same day?

A. Same day; yes, sir.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Ridge, after the safe containing this package reached Nashville, did Mr. Hurley stay with it?

A. Yes, sir.

Q. You do not know of your own personal knowledge what was in the package, do you?

A. No, sir.

Q. After it was taken from one office of the Railway Express in Nashville to another office, did Mr. Hurley accompany it?

A. Yes, sir.

758 Q. Was Mr. Hurley with the package when you left Nashville?

A. To the best of my knowledge he was with it at all times until it was placed on the shelf.

Q. The last time you saw the package, Mr. Hurley was with it?

A. We were both relieved at the same time, as well as I remember. Now that's the best of my knowledge at this late date.

Q. I am speaking of F.B.I. Agent Hurley.

A. That's right, F.B.I. Agent, Mr. Hurley.

Q. Did somebody relieve Mr. Hurley?

A. There was somebody there supposed to relieve him. I don't know whether they did or not. There were some other F.B.I. men there that finished the job, I believe.

Q. Other F.B.I. men took up Mr. Hurley's duties?

A. That's right, as far as I know.

Mr. Hogan: All right, Mr. Ridge, that's all.

Redirect Examination by Mr. Inman.

Q. Who was in charge of the Nashville office of the Railway Express at that time?

Testimony of John M. Ridge

A. W. L. Almon.

Q. Is he still in charge of that office?

A. No, sir. His health wouldn't permit and he
759 is not there now. Mr. Harding, I believe, succeeded him.

Mr. Inman: That's all.

EDGAR N. WOOD called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Edgar N. Wood.

Q. Where are you employed?

A. I am District Accountant for the Railway Express Agency at Chattanooga, Tennessee.

Q. How long have you been with the Railway Express Agency?

A. Twenty-three years and five months.

Q. Mr. Wood, as District Accountant of the Railway Express Agency, do you have custody and control of the records of the Railway Express Agency in this Division?

A. Yes, sir.

Q. Directing your attention to delivery sheets, are you familiar with that term?

A. Yes, sir.

Q. Express term?

A. Yes, sir.

Q. And what is a delivery sheet?

760 A. A delivery sheet is a part of the document that's made up to transport a package from one point to another.

Q. A waybill?

A. Yes, sir, and it is turned into the Auditing Department for audit and accounting.

Q. Is that or not the sheet that would ordinarily be signed by the consignee?

Testimony of Edgar N. Wood

A. Yes, sir.

Q. Showing the receipt of the package?

A. Yes, sir.

Q. Do you have now in your custody, delivery sheets from October, 1934?

A. No, sir; the October, 1934, have been destroyed.

Q. How long do you keep the original in your file?

A. Six years.

Q. Are you familiar with Form 5024, I believe it is?

A. Yes, sir; it is a register of messenger shipments.

Q. Do you have in your custody now the Forms 5024 for October 12th, 1934?

A. They were destroyed three years after that time, sir.

Q. I'll show you this document and ask you whether or not that is an official document of the Railway Express Agency.

761 A. Yes, sir; it is.

Q. What is it, Mr. Wood?

A. This is an "on hand" card, what we term an "on hand" card.

Q. On hand? H-a-n-d?

A. Right, sir.

Q. What is an "On hand" card?

A. That's prepared from a delivery sheet when the package is not delivered immediately and it is retained at the Agency and the original delivery sheet is forwarded to the District Accounting Department for auditing and accounting.

Q. Of what shipment is that "on hand" a record?

A. It is a record of one package, consigned to T. H. Robinson, Ashwood Avenue, marked "Will call," and the "on hand" number is 7185, and the date of the waybill is October 12th, 1934. The waybill number is 3441, one package that weighed seven pounds. The declared value was \$10.00 and it was prepaid—that means the charges were prepaid, amounting to 45 cents. It moved from Louisville, Kentucky, on October 12th, and it was shipped by Mr. J. E. Tarrant and received by Railway Express Agency, signed T. H. Robinson, identified by F. C. Bailey, delivered by

Testimony of Edgar N. Wood

W. L. Almon on October 15th, 1934, at 12:30 p.m.

Q Who is W. L. Almon?

A. He was the agent at Nashville.

762 Q. Agency of the Railway Express Agency?

A. Railway Express Agency at Nashville, Tennessee.

Q. File that as Government Exhibit 45.

A. I do.

(The document referred to was handed to the reporter and filed with the record as Government Exhibit No. 45.)

The Court: Is that the original record of the Railway Express Agency, Mr. Wood?

The Witness: That is a copy of the original record, Your Honor. The original record is the delivery sheet, but that is—

The Court: I mean, so far as that itself is concerned.

The Witness: Yes, sir.

The Court: Is that kept in the usual course of business by the Railway Express Agency?

The Witness: Yes, sir. That comes under us and we keep it for the same period as the delivery sheet after it is signed.

The Court: And it was part of the usual course of business of the Railway Express Agency to make such records as that?

The Witness: Yes, sir.

The Court: At the time the transaction occurs?

The Witness: Yes, sir; that's the regular practice, Your Honor.

763 Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Where were you located during October, 1934, Mr. Wood?

A. I was in Chicago, Illinois, at that time, sir.

Q. You did not see Mr. Robinson sign for that package?

A. No, sir.

Testimony of Edgar N. Wood

Q. And you cannot say that that is his signature?

A. No, sir.

Q. Nor can you say that that package was delivered to him.

A. I cannot personally; no, sir.

Mr. Hogan: That's all.

FERRISS C. BAILEY called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. F. C. Bailey.

Q. That's Ferriss Bailey?

A. Yes, sir; Ferriss C. Bailey.

Q. Where do you live, Mr. Bailey?

764 A. I live in Nashville.

Q. Tennessee?

A. Yes, sir.

Q. What business are you engaged in?

A. I am an attorney.

Q. Practicing attorney there?

A. Yes, sir.

Q. On October 15th, 1934, did you see Mr. W. L. Almon of the Railway Express Agency?

A. Yes, sir.

Q. Did you know him?

A. Yes, sir.

Q. Where did you see him, Mr. Bailey?

A. I saw him on Church Street near the Paramount Theatre. That's between Seventh and Eighth Avenue on Church Street, in Nashville.

Q. Did you see him again on that day?

A. Yes, sir.

Q. Where did you next see him?

A. I saw him in my office possibly thirty or forty minutes later.

Testimony of Ferriss C. Bailey

Q. Who else was in your office at that time?

A. Mr. Robinson, Sr. was there. I don't recall whether Mr. Lackey was there at the time or not.

Q. Is that Mr. Thomas Henry Robinson, Sr.?

A. Yes, sir.

765 Q. Did you know him?

A. Yes, sir.

Q. Did Mr. Almon have anything with him?

A. He had a package addressed to Mr. Robinson—Mr. Robinson, Sr.

Q. Was that package or not delivered at that time to Mr. Robinson?

A. Yes, sir; it was.

Q. I'll show you Government Exhibit No. 45, and ask you if the name F. C. Bailey on that was written by you.

A. It was.

Q. Where was that written?

A. It was in my office.

Q. At the time of the delivery of the package?

A. Yes, sir.

Q. Now, examine the signature there, T. H. Robinson. Who signed that?

A. Mr. T. H. Robinson.

Q. Senior?

A. Yes, sir.

Q. Was that signed in your presence?

A. Yes, sir.

Q. And the name W. L. Almon, was that signed in your presence?

A. Yes, sir.

Q. By whom?

766 A. By Mr. Almon.

Q. On what date was that?

A. October 15th, 1934, about 12:30 p.m., according to this ticket.

Q. That's the record on there?

A. Yes, sir.

Q. And what shipment is covered by that record, Mr. Bailey?

The Court: That's in the record once, isn't it?

Testimony of Ferriss C. Bailey

A. It shows that the shipper was Mr. J. E. Tarrant:

Q. And the consignee, Mr. T. H. Robinson, Sr.?

A. Yes, sir.

Q. Was that package actually delivered to Mr. Robinson at that time?

A. It was delivered to him at that time and he took possession of it, but left it there at the office until he could get a suit-case.

Q. At your office?

A. Yes, sir.

Q. How long did the package remain at your office?

A. I would say about two or two and a half hours.

Q. Then what happened to it?

A. Mr. Robinson placed the package in the suit-case that he brought to the office later and carried it from the office, and as I understand carried it—

Q. Not what you understand. Did you see it any
767 more?

A. I didn't see the package after that.

Q. On that same day, October 15th, did you have occasion to go to a bank with Mr. Robinson, Sr.?

A. Yes, sir.

Q. What was the purpose of going to the bank?

A. A check was delivered to me, signed by Mr. C. C. Stoll, and payable to me, and I was told—

Mr. Hogan: That's objected to.

A. At any-rate, I went with Mr. Robinson to the bank and cashed the check and gave him the money.

Q. How much money?

A. As I recall, it was \$125.00.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Bailey, I believe you are related to the Charles C. Stoll family?

A. My wife is related to the Stoll family.

Q. In what way is she related?

A. She is a first cousin to Mr. Berry Stoll.

Q. When this package was brought to your office by Mr. Almon of the Railway Express, who accompanied Mr.

Testimony of Ferriss C. Bailey

Almon?

A. I don't know, sir. So far as I can recall, he was by himself. There might have been a driver with him
768 or someone with him, but I don't recall at this time.

Q. To your best recollection, there was a driver or someone appearing in the role of a driver with him?

A. I am not certain about that. I just can't remember. I knew Mr. Almon, and I, of course, remember him being there. I had known him before.

Q. Was Mr. Stoll, C. C. Stoll, in Nashville at this time?

A. Yes, sir.

Q. Was Mr. Fred Sackett in Nashville at that time?

A. Yes, sir.

Q. What was their purpose or business in Nashville at that time?

The Court: Now, if this witness had any business with them, he might know.

Mr. Hogan: He did. He will know.

A. The purpose of their visit, of course, is in part presumption on my part. I can tell you what happened.

Q. Will you do that, sir?

A. Mr. Stoll and Senator Sackett were registered at the Andrew Jackson Hotel, and Mr. Robinson and his attorney called at the hotel and there was a discussion as to delivery of the package to Mr. Robinson, Sr., and I presume they came there for that purpose, to discuss with Mr. Robinson, Sr. the delivery of the package.

769 Q. Now, Mr. Robinson, Sr. didn't care to have anything to do with that package, did he, Mr. Bailey?

A. As I understand, he didn't care to accept delivery at the Express office, and the plan was worked whereby the package would be delivered to my office and he would accept it at that point.

Q. What did he do with the package when it was put in the suitcase?

A. I can answer that from what I was told by Mr. Robinson, Sr. and others.

Q. No, let's don't have that.

A. I can say this, he carried it from my office. That's all I can answer from my own knowledge.

Testimony of Joseph R. Johnson

Mr. Hogan: That's all, Mr. Bailey.

Mr. Inman: That's all.

JOSEPH R. JOHNSON, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury, please, sir.

A. Joseph R. Johnson.

Q. Where do you live, Mr. Johnson?

A. 4485 Marcy Lane, Indianapolis.

770 Q. During the year 1934, particularly in September and October of 1934, where did you live?

A. 2725 North Meridian.

Q. At that time, how were you employed?

A. I was employed as custodian and rental agent over the two buildings there.

Q. At what address were those buildings?

A. 2725 and 2735 North Meridian.

Q. They are in the City of Indianapolis?

A. City of Indianapolis.

Q. Sometime in September, 1934, did you have occasion to show Apartment 2 to any tenants?

A. Yes. Around September 22nd or 23rd of September, I showed the apartment. A Mr. Bennett brought a man and his wife by the name of Kennedy.

Q. Were you introduced to Mr. and Mrs. Kennedy on that occasion?

A. Yes, sir.

Q. Did you show them an apartment?

A. Yes, I showed them Apartment 2 in Lafayette Court, 2735.

Q. As a result of that showing to them did Mr. Kennedy rent Apartment 2?

A. He rented the apartment; yes, sir.

771 Q. Are you able to tell the jury, point out in the court room, if he is in the court room, this man Kennedy that you rented the apartment to on Sep-

Testimony of Joseph R. Johnson

tember 22nd, 1934?

A. Right over there.

Q. Was he accompanied by a woman who was introduced as his wife at that time?

A. Yes, sir.

Q. I'll show you Government Exhibit 25 and ask you to examine that and tell the jury whether that picture fairly and truly represented the likeness of the woman that accompanied him on that occasion.

A. That's the lady I knew as Mrs. Kennedy.

Q. I'll show you a document and ask you to examine that and tell the jury what it is.

A. Well, that's one of our rental receipts, rental forms that we had, when a person rented our apartments, that we tried to get their references and everything on, and it showed the deposit on the rentals and the keys, and, of course, we rented linen at that time, but we didn't show that on this here.

Q. Now, is that rental contract signed by the man named Kennedy that you now identify as Robinson?

A. That's the signature that was signed by Mr. Kennedy.

Q. What did he show that he gave as his name at that time?

772 A. Thomas W. Kennedy or Thomas H. Kennedy.

The Court: What do you mean, Thomas W. or Thomas H.?

The Witness: I can't hardly tell.

Q. With reference to the apartment, what apartment does it show?

A. Shows Apartment 2, Lafayette Court.

Q. And the address?

A. 2735 N. Meridian.

Q. And the rental per month?

A. \$47.50 rental per month and a dollar deposit on the keys, total \$48.50.

Q. Any reference to any references that he gave?

A. Well, it shows the Union Mixed Asphalt Paving Company of Louisville, Kentucky.

Q. Does it show any other references written in in

Testimony of Joseph R. Johnson

pencil?

A. Yes. It shows Storms Building, O. M. Clark, Kosmosdale Portland Cement Company.

Q. And is that signed Lafayette Court Company by H. H. Woodsmall Agency, by whom?

A. By J. R. Johnson.

Q. You are the J. R. Johnson?

A. Yes, sir.

Q. And that it is also signed by—

773 A. Thomas H. or Thomas W. Kennedy.

Mr. Brown: I would like to introduce this as Government Exhibit No. 46.

(The document referred to was handed to the reporter and filed as Government Exhibit No. 46.)

Q. Did Mr. and Mrs. Kennedy—was that apartment a furnished apartment, Mr. Johnson?

A. Furnished apartment.

The Court: You say it was furnished?

The Witness: Furnished apartment.

Q. After Mr. and Mrs. Kennedy moved into that apartment, Mr. Johnson, did you find any place to store their car?

A. Yes. Mr. Kennedy, he asked me if I thought I could find him a garage, and I said I thought I could because we had no garages with those buildings, and finally I got one down the alley. I had Mr. Kennedy to go down and look at it, and he said that was satisfactory. I forget now just what the rent was. I think it was \$3.00 a month. I know it was paid.

Q. Now Mr. Johnson, how is that apartment entered?

A. Well, that's entered in a court. You come off this Meridian Street, you come in here and you make a turn this way and this way for a walk. Well, the first entrance is the No. 1 and No. 2 Apartments. Well, the No.
774 1 is in the front after you enter the door and go up a few steps and the door there is No. 2.

Q. Now, with reference to any other entrance, is there any other entrance?

A. Well, there is a back entrance, yes, and you come

Testimony of Joseph R. Johnson

in from the alley up to the side of the building on a concrete walk, then you come up a few steps onto a porch, and there is a door there and there is a door here. That door there goes into Apartment 1 and this door here goes into Apartment 2.

Q. Now with reference to the lights, the street lights in the alley, in 1934, would you tell the jury whether the alley was dark or light?

A. Well, that alley was quite dark. All the light practically the alley got was from the Marriott Hotel and the other entrance down at the other street, Twenty-eighth Street, and, of course, we had a light on each landing of the back stairs.

Q. Now tell the jury with reference to the condition of those lights on the landings, whether the lights were on or off.

A. Well, we kept—those lights were turned on by an electric clock, they went on a certain time in the evening and went off at a certain time in the morning. After this thing happened, we had noticed that we had had
775 more trouble with light bulbs being screwed out on these landings.

Q. You mean during that period the lights were unscrewed?

A. Yes, screwed just down out of the socket.

Q. Now, with reference to this apartment, can you tell the jury with reference to the shades in this apartment during this period the Kennedys occupied it?

A. From the time the Kennedys rented the apartment, the shades were pulled down, plumb down to the bottom of the sash, down to the bottom of the sill.

Q. During your attention to the period particularly ending October 16th, 1934. Did you have occasion pretty close to midnight on that night to hear about the kidnapping of Mrs. Alice Stoll?

A. Well, that morning I had went around through—had a lot of paper blowed over the court, and I went through the court and was picking up papers and I happened to pass Apartment 2 windows, which was three windows practically in a row, small windows. That was

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the only time I ever seen that window shade raised and it was raised, oh, say about a foot high. There was some lady laying on the davenport with her hand under her head. That's the only party I ever seen around there.

Q. Are you able to tell the jury who that woman was?

A. Well, I don't know.

776 Q. Now on that same day later that evening, on October 16th, did you have occasion to go in that apartment?

A. Yes, along about midnight I was in the bed asleep and three or four men came to my door and knocked—

Q. (Interrupting) Now, let's don't repeat any conversation—as a result of their being there did you go into Apartment 2?

A. Yes.

Q. Tell the jury the condition of Apartment 2 when you went in there?

A. Well, when I went in I saw quite a lot of telephone wire. I saw some adhesive tape—quite a lot of it, made into—

Q. (Interrupting) Made into lattice work?

A. Yes—

Mr. Hogan: That is leading, Your Honor.

Q. What else did you find, Mr. Johnson?

A. Well I found a lot of dirty linen that was left there on the old built-in sideboard or china closet you might call it; it was built in the wall; and a lot of food-stuff.

Q. Now with reference to the closets in that apartment, can you tell the jury what closets there were and what were in each of them?

777 A. Well we had a closet that had an in-a-door bed—that a bed was in; then we had a closet here as you went into the bathroom, and then we had a closet here right over to the side; and this closet in the bath room it looked like it had been used a whole lot. In there I would say that there was a great big greasy spot like somebody's head had leaned up against that wall.

Mr. Hogan: Now that's objected to.

The Court: Objection sustained. Don't give your

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opinion of it; just give the facts there as you saw them.

Witness: Yes.

Q. Was there a closet immediately to the left of the bath room?

A. Yes, just before you went into the bath room.

Q. Now, directing your attention to during the period of October 10, 1934, did you have occasion to see Kennedy or Robinson as you now identified him on many or few occasions?

A. I only seen Mr. Robinson after the time he rented the apartment, I only seen him the time that he went down and looked at the garage; and I seen him one day when I was fixing a front screen door.

Q. All right. Tell the jury about that?

A. Mr. Kennedy came down and said that he was going to Sam's subway to get him a beer and that he
778 would like for me to go across with him, and I said no I have got to fix this door up here. Then Mr. Kennedy was gone I would say about 15 minutes and he came back and he said, "Did the mailman come?" And I said, "Yes he came but I don't know whether you got anything or not." And he looked and said no he didn't get any, and that was the last time I ever saw him.

Q. When did you next see this man after that occasion—the man that you now say is Robinson?

A. Last Monday morning here in the court room.

Q. With reference to the bed room, Mr. Johnson, what type furnishings were in the bed room during October of 1934?

A. Well in the bed room we had twin beds and a dresser and a table and a couple of chairs.

Q. All right; with reference to the living room can you recall how the living room was furnished?

A. We had an overstuffed living room suite and a table and some odd pull-up chairs.

Q. Now with reference to the dishes or the linens in the apartment, were they owned by the apartment people or were they owned by the tenants?

A. They were owned by the apartment because I had to buy a new set of dishes and some cooking utensils when

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I rented the apartment to Mr. and Mrs. Kennedy.

779 Mr. Brown: That is all.

Cross-examination by Mr. Hogan.

Q. Mr. Johnson, the first time you saw the man who called himself Kennedy was on September 22d when he rented the apartment?

A. Well now it was in that neighborhood—I would not say it was that date.

Q. Well you saw him the day indicated on that card, didn't you?

A. Yes I did.

Q. Now will you refer to that card and state whether or not it was the 22d or the 23?

A. The 22d.

Q. So now it is fixed in your mind that it was the 22d?

A. Yes.

Q. Now when did you see him next with reference to the lapse of time?

A. Well the next time I seen Mr. Kennedy I think was on Monday morning.

Q. After the 22d?

A. Yes.

780 Q. Monday would be September 24th, wouldn't it?

A. That is the day I ordered the dishes out and taken them over to Mr. and Mrs. Kennedy's apartment.

Q. Well the question was whether or not Monday would have been September 24th?

A. Well now I would not say it was Monday—It has been some years ago, but it was the following 2 days after I rented them the apartment because it taken me that long to get the man and get the dishes out there.

Q. The 22d was Saturday?

A. I believe it was.

Q. I believe your wife was living at that time?

A. Yes, sir.

Q. Did she assist you in the management of that apartment?

A. No; my wife did not assist me at all. My daughter

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assisted me with the linens over to Mr. and Mrs. Kennedy's house?

Q. This apartment that is known as 2735 is built into a court fashion, isn't it?

A. Yes; just like a "U."

Q. Yes.

A. And you go in this way and then right around.

Mr. Hogan: Now we have some pictures here.

The Court: Now there was some objection to 781 the changes—were there any material changes there?

Witness: Not in that court.

The Court: Not in Apartment 2?

Witness: I don't know. I haven't seen that apartment since 1935. I moved away from there and I have not had any occasion to go there.

Mr. Brown: I will show him our exhibits and ask him.

Mr. Hogan: All right.

Redirect Examination by Mr. Brown.

Q. Suppose you examine Government Exhibit No. 12 and see if that fairly and accurately portrays the outside of that apartment? The apartment building at 2735 North Meridian?

A. This must have been taken more from the 28th Street.

Q. Do you recognize that picture?

A. Yes.

Q. And I show you Government Exhibit No. 11, being the picture of two garages, and ask you if that fairly and accurately represents the garages back in an alley behind apartments 2735 and 2725?

A. No, there are no garages back of there. That would be 2709.

782 Q. Well, back of 2709.

A. Now this is the garage that I got for Mr. Kennedy.

Q. I show you government exhibit No. 13, and ask you if that fairly and accurately represents the outside view of the bathroom window of Apartment No. 2?

A. I should say I think so. It looks quite like it. Of

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course the door don't show here much.

Q. Now I will show you government exhibits Nos. 14, 15 and 16 and ask you to examine that and tell the jury whether or not those 3 views fairly and accurately represent the closet to the left of the bath room that you have talked about?

A. Yes; they do.

Q. I will show you government Exhibit No. 18 and ask you if that fairly and accurately represents the back of the apartment at 2735 North Meridian?

A. Yes; that is the back stairway of the apartment but that isn't the stairway where there would be apartments Nos. 1 and 2.

Q. No, that is the back of it?

A. Yes, that is from the alley.

Q. Now I show you government Exhibit No. 17 and ask you if that fairly and accurately represents to the best of your recollection the far corner of the living
783 room from the door?

A. Yes; there is the fireplace and the built-in bookcases and the davenport we had in there.

Q. I will show you government Exhibit No. 19 and ask you if that is the basement door in the alley back of the apartment at 2735 North Meridian?

A. Yes, sir.

Q. I will show you government Exhibit No. 20 and ask you if that fairly and accurately represents the back porch and the bath room window?

A. Yes, sir.

Q. Then I will show you Government Exhibits Nos. 21 and 22, and ask you if that represents fairly and accurately the ariel way between the 2 apartments, 2725 and 2735 North Meridian taken from a point looking toward Meridian Street?

A. That would look like it from the alley, taken from the alley looking West.

Q. Toward Meridian?

A. Yes.

Q. I will show you government Exhibit No. 23 and ask you if that fairly and accurately represents the back

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of the apartments 2725 and 2735 taken from a point near the Marrott Hotel?

784 A. Yes; this is the Westminster and this is the LaFayette court building.

Cross-examination Continued by Mr. Hogan.

Q. Now, Mr. Johnson I will stand here beside you so as not to be between you and the jurors.

A. Well, let me put my glasses back on again.

Q. I show you photograph marked defendant's Exhibit No. 1 and ask you if that fairly and accurately represents the court of the LaFayette Apartment as of October 1934?

A. Well that is the same in there. Here is the apartment here.

Q. That is just a different picture?

A. It represents the 2 floors. It is the same court, only this shows the vines and everything that the other one didn't.

Q. But the building is the same?

A. This building is practically the same. I don't remember about this archway over the door.

Q. But the windows to the apartment are the same?

A. Yes; there are the 3 windows.

Q. All right. Now I show you this Exhibit No. **785** 2, defendant's exhibit, which purports to portray the size and condition and layout of the living room of that apartment No. 2. Is that just about the way that living room looked in 1934—October?

A. Well I wouldn't say it did because the furniture ain't placed in there like it was.

Q. No, I didn't mean the furniture. I mean the walls and the windows?

The Court: The size and the location of the windows?

Witness: Well I don't know what size that would be, Judge.

The Court: But does it appear to clearly portray the windows?

Mr. Brown: We have definite measurements of the size. But I think it does accurately portray the interior

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view of the apartment.

Witness: Yes it does.

Mr. Brown: I certainly have no objection to that.

Q. Now I show you defendant's exhibit No. 3. This one has been cut in two but it purports to show the windows in the bed room.

A. Well it don't show no radiator under the windows there.

786 Q. Well that is in the bed room, now?

A. Oh, the bed room.

Q. Was that the condition of the windows in that apartment in October 1934?

A. The windows are the same thing. I don't know if there were 3 windows in the bed room or not but I guess there was because you have got a picture of it.

Q. Yes.

The Court: The picture was introduced not to show what was shown through the windows. I think that was agreed on, wasn't it?

Mr. Hogan: Yes.

Q. I show you defendant's Exhibit No. 13, which purports to show a view taken from in the living room of Apartment No. 2 and showing into the bath room and into the living room. Was that the situation in October 1934?

A. Yes.

Mr. Hogan: I would like to introduce that as defendant's Exhibit No. 13.

(The picture above described was handed to the Reporter and filed with the record.)

Mr. Brown: I will stipulate, in the interest of saving time, that they represent the condition of the apartment as of October 1934.

787 Mr. Hogan: I would like to introduce defendant's exhibits beginning with No. 4 through 13, inclusive.

(At this point the exhibits are handed to the Reporter, marked Defendant's Exhibits Nos. 4 through 13, and filed.)

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Q. Mr. Johnson, do you recognize defendant's Exhibit No. 11 as showing the composite view of the La-Fayette Apartments?

A. Yes.

Q. And you have already identified No. 13 as showing a view into the bath room and some view into the bed room.

A. Yes.

Q. Do you recognize Exhibit No. 8, defendant's exhibit, as showing the view taken of the sidewalk looking towards the back porch to Apartment 2? Or the back porch that serves Apartment 2 and 1?

A. Yes. It does not show the door going into that apartment.

Q. No. I will show you another view that shows the door. Now I will ask you to look at this No. 8 again and tell the jury about these 2 windows that are shown there?

A. This window here is the bath room window in what we call Apartment No. 1 and this one here is the bath room window in Apartment No. 2.

788 Q. This window here is what?

A. The kitchen window of apartment 2.

Q. That is slightly higher?

A. Yes, the kitchen sink was under that window in the kitchen.

Q. What is this group of windows just beyond the window in the kitchen?

A. That is in the bed room.

Q. I believe there are 3 windows shown there?

A. I don't know whether there are one or two.

Q. The other view showed 3 windows?

A. Yes.

Q. Referring to Exhibit No. 3. Now this back porch on No. 8, there are stairs leading up to the upper apartments off of that porch and also stairs leading down to the ground off of that porch. Is that correct?

A. Yes, from the walk here up to the first porch landing it is across the porch and up the steps to the second floor. There was only two floors to the apartment.

Q. Now No. 9. Do you recognize that as being taken

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in the bed room and looking across the kitchen floor to the porch floor in the rear of these apartments 1 and 2?

A. Yes; this here door between the bed room and
789 the kitchen was one of those doors that worked both ways. Now you have got a back door leading out on the back porches. This would be the kitchen.

Q. This box holding the kitchen door open would be the milk box?

A. That is what it looks like.

Q. And the bath room windows for apartments number 1 and 2 are shown on No. 9?

A. That is for 1 and 2.

Q. If you look at No. 8 I think it will show you that this bath room—these bath room windows are side by side that is one window for each bath room in each apartment?

A. Yes; but it just don't show that here plain.

Q. Now, do you recognize Exhibit No. 10 as showing the walkway and the space and the distance between the apartment buildings at 2725 and 2735 North Meridian Street?

A. Well the picture shows to me, it looks like it is rather narrow through there than what it really is. Of course, I guess that is on account of the walks.

Q. The distance has already been testified to. The question is does that show the 2 buildings?

A. Yes.

790 Q. And that shows the windows of these various apartments opposite each other, doesn't it? It isn't exactly opposite, but there are windows close there?

A. Yes, there are windows there in both buildings.

Q. Now this Exhibit No. 12, do you recognize that as a view taken from the back porch looking into the kitchen and prominently showing the bath room window of apartment No. 2?

A. Yes; there is our little porch light.

Q. You recognize the porch light?

A. Yes.

Q. Tell the jury where that porch light is located?

A. Right between the 2 windows.

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Q. The 2 bath room windows?

A. Yes; and those are the lights that I had such a hard time to keep burning. When the clock turned them then they came hollowing that somebody was going to fall down the back stairs and get hurt.

Q. Mr. Johnson, I saw something here in the top of No. 12—

A. (Interrupting) That is that they put their trash in.

Q. A big trash can?

791 A. Yes; a big can. Both apartments put trash in the big can and each one of them then had a little garbage can.

Q. The people using the apartment No. 1, would they go out on the back porch if they had occasion to put their trash in?

A. Yes.

Q. Who collected the garbage?

A. They had a colored fellow who came around and gathered up all of the garbage in this particular apartment. In the Wesminister we had an incinerator. The helper I had there would take the trash and burn it in the incinerator in the furnace room.

Q. Who is this garbage man you speak of?

A. I don't know. Just anybody who had hogs. He would collect the garbage so he could have the slop for his hogs.

Q. And who picked up the paper trash you had there?

A. Dolmar Jones. He is in the Army but I don't recall the other one.

Q. Did you have 2?

A. At different times. There was not enough there so we needed two. But sometimes when there was no one there but me, I did it.

792 Q. So you and Dolmar Jones and what was the other fellow's name?

A. I don't remember his name now.

Q. So one of you three would alternate in going there and picking up this trash. Is that what you mean to say?

A. Yes.

Q. And about how often would you say you went

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and picked up the trash?

A. I can't say that. Sometimes I wouldn't go once a week and sometimes I wouldn't go one time in two weeks. One of us had to get it.

Q. How often was it picked up?

A. It was supposed to be picked up every day.

Q. And of course you saw that it was done either personally or you saw that it was done?

A. Yes.

Q. Do you recognize No. 7 as being the bath room fixtures?

A. Well that is just about what I would think it was. I think that is just about as good a picture as I have ever seen of it.

Q. That is a pretty good piece of photography?

A. Yes.

793 Q. You have been in there several times?

A. Yes, we cleaned it several times. I guess we had to be in there to clean it.

Q. Do you mean it was your job to do that?

A. Yes; first one and then another would move out; and if we papered it we had to go in there and clean it up and clean off the tile.

Q. You just had to do everything there?

A. Yes, put near.

Q. You were chief cook and bottle-washer there?

A. Put near.

Q. It is a big job to manage one?

A. I should say it is.

Q. Now in this bath room, we will talk about that.

A. Yes.

Q. Here is the bath room? Here is the basin?

A. Yes.

Q. That has got a faucet through which you can run hot and cold water?

A. Yes.

Q. And this is the toilet consisting of a water box and a bowl?

A. Yes.

Q. That of course was operating all the time?

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794 A. Well I never had no complaints about it.

Q. There was a steam radiator in there?

A. Yes.

Q. And a wash basin?

A. Yes.

Q. And a bath room window?

A. Yes, and the cabinet.

Q. And a medicine cabinet?

A. Yes.

Q. And a light?

A. Yes.

Q. Now looking at the West wall of that bath room, what is on the other side of that wall?

A. On the other side of that wall would be another bath room.

Q. In other words, the bath room to apartment No. 1 would just be back to back with the bath room in apartment No. 2?

A. Yes.

Q. Now was that done to facilitate or economize on the plumbing?

A. Now you are asking me a question that I don't know anything about. I don't know anything at all about plumbing.

Q. You didn't build the place and you don't know?

795 A. No.

Q. But was this other bath room comparable in size and shape?

A. Just the same.

Q. And it had a window as shown on some of the other views just a little bit away from this window in here?

A. Yes; this window away from this back wall. It was not right up against the wall. And the other one would be about the same distance on the opposite bath room.

Q. Suppose you take this No. 12 and sort of estimate the distance between the two windows?

Mr. Brown: I don't know whether you can ever estimate distance from a photograph. We have a map here of that drawn to scale.

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A. I think those windows would be about 24 inches apart, just judging from the distance.

Q. About 2 feet apart?

A. Yes.

Q. The basin right under this medicine cabinet as shown in No. 7 shows both faucets, one hot and one cold?

A. Yes, two faucets.

Q. And that water was turned on and running, of course?

A. Oh yes we had hot and cold water the year 'round.

796 Q. Now look at this No. 7 again showing the interior of the bath room. I see these pipes connected with the steam radiator appear to go into the side of the wall; where do those pipes lead to?

A. Well where would you get your steam from?

Q. Into the basement?

A. Yes; they would have to lead to the basement and in the basement there we had these different lockers for the tenants to store stuff in and they were covered with this asbestos so the water would not cool off before it was distributed to the different apartments.

Q. That would apply to down in the basement, but these pipes are not covered?

A. They are ordinary steel pipes.

Q. It is bound to connect up with the furnace so that the heat may travel through them, or the hot steam?

A. Yes.

Q. Now I show you No. 6 for the defendant. Do you recognize that as being the bath room door closed and this linen closet. Here is part of the bath tub?

A. You mean on the inside of the bath room?

Q. That's right?

A. Yes.

Q. Now that shows the door closed?

797 A. Yes.

Q. Is this the end of the bath tub down there?

A. Yes.

Q. And this is a cabinet showing 4 doors?

A. Yes and that was a door. I don't know if the

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cabinet had 3 or 4 doors but that looks like the layout of it.

Q. Now that bath room it was—have you got your glasses there?

A. Yes. I have got them right on.

Q. Does that show the latch on that door? You recognize that don't you? That thumb latch right there?

A. Yes it shows it is closed and thrown over.

Q. And you could go in and close the door and throw that thumb latch and lock the door, couldn't you?

A. Yes.

Q. If you wanted privacy and wanted to stay in there you could lock the door?

A. Yes.

Q. Is that a strong latch?

A. I should think it would be.

Q. It would be sufficiently strong to keep from someone coming in there?

A. I don't know as it would do for an outside door. If you had the door closed and had the lock throwed there and if you wanted to go in there and found it
798 was locked I don't know how strong the lock would be.

Q. That would be to keep somebody from getting in there?

A. Well that is what they usually use them for.

Q. Now No. 5 shows the bath room window in the bath room we are talking about, showing the steam radiator with the bath room window open. This bottom sash is open. Do you recognize this as the trash can setting on the outside there?

A. Yes.

Q. That is a glazed glass?

A. Yes, a florentine glass that you can't see through.

Q. I will take your word for that; I have never heard of that.

A. That is what they call it. So you can't see through it.

Q. Did the other apartments have the same size windows?

A. Yes.

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Q. I will show you Exhibit No. 4 which is another view of that same bath room window. It does not show the top of the radiator but it does show a close-up view of the sill and it shows more of the porch, more where the trash can is setting on the porch. Do you recognize that?

A. Yes; they must have set their camera up there close.

Q. And that is the similar situation with reference to the other bath room windows in those apartments. Is that right?

A. Yes; I think they were all the same thing.

Q. Now, Mr. Johnson, you have mentioned putting some soiled linens somewhere a moment ago in your testimony. Was that this cabinet right here?

A. Well, let's see the bed room.

Q. Well that is as much of the bed room as I can show you.

A. Well there was a built-in—what would be an old-fashioned china closet in there, and then the top was up and here is the top of the cabinet. In there is where I found the dirty bloody linens. Now in this cabinet this door was open where I seen—maybe I had better not say that?

Q. Maybe you had?

A. Well that was where I seen the wiring and the tape?

Q. Anything else?

A. That is all.

800 Q. Now, these cabinets here, are they fairly wide?

A. Well they are regular linen closets that would be in a bath room. I would say it would be about 20 or 24 inches. I don't know. Just the exact dimensions of it I wouldn't know. It would be between the door and the wall of the bath room as you went into the bath room.

Q. Maybe I can get a better one here that would better serve the purpose. Now take Exhibit No. 13 and take Exhibit No. 6. Now, Mr. Johnson, I want you to tell me this: If you were in this bath room here with this door

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open, and did not want anybody to see you, could you step over here to where this linen closet is and get out of view? Now look at this one and look at that one.

A. Well I don't hardly think you could.

Q. Now look at that one, isn't there room enough for a person to stand in front of that linen cabinet?

A. Which one?

Q. This one?

A. The way it shows there—but I don't know. I would say this one would be around about 20 or 24 inches from this facing to the wall and then there is another one here.

Q. How far does this cabinet extend out? In
801 other words how wide is the cabinet—how far does it extend out from the wall?

A. Now to answer that question truthfully I don't know if it sticks out from the wall one bit or not.

Q. How wide are you across the shoulders?

A. I will leave you to guess at that.

Q. All right. Stand up here and we will get the tape line and measure you.

(At this point counsel measures the witness across the shoulders.)

Q. You are a little less than 20 inches wide. Now if you are less than 20 inches wide and you think that cabinet is 24, there is enough room for you to get in front of that cabinet with some inches to spare?

A. Yes; if that cabinet is 24 and I am 20 I would say that. You know that.

Q. Now, Mr. Johnson, didn't you have some trouble with some of those other apartments and find it necessary on occasions to go either in or out of the bath room windows?

A. Yes; over on the 28th street side.

Q. You got through there with your body, didn't you?

A. If I got in there I had to get through with the body; yes. Yes, I had to crawl in several times to get in if they would lock the key up inside and that was the only way I had to get in there. I had to take a ladder
802 over there.

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Q. How often would you say you had to go through there?

A. I don't remember; that has been a long time ago but at that time I thought I had to go in there pretty often. There was one particular party that I had to go in for pretty often.

Q. How tall are you?

A. Supposed to be 5 feet 11½.

Q. How much do you weigh?

A. Now?

Q. Did you weigh then?

A. I think I went down to 169 pounds there.

Q. You got down pretty skinny, didn't you?

A. I sure did.

Q. How much do you weigh now?

A. 185.

Q. You are 16 pounds heavier than you were in 1934, aren't you?

A. Yes. Because I had a lot of firing to do and we were cleaning apartments, too, you see.

Q. You mean they were working you pretty hard then?

A. Yes, they did.

Q. You were on the job all the time?

803 A. Yes.

Q. These tenants kept you busy running from apartment to apartment all the time?

A. No, I wouldn't say that. We didn't paper every apartment and we didn't clean every apartment.

Q. Tell us about the cleaning. Who cleaned those apartments?

A. We had different fellows to go there and paper and then we had another fellow from a different building to go over and work over there and I would jump in and clean kitchens, etc.

Q. I mean about maid service?

A. There was no maids there. I and the other fellow did all the work.

Q. You were the old maid?

A. Yes.

Q. What did your services consist of?

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A. On Friday evening maybe he would take the vacuum sweeper and run it up and down the halls in the Westminster Building. Then on Saturday in the vestibules of those apartments we would sweep them out and sometimes mop them out.

Q. About the interior of the apartments?

A. We never went inside the apartments, from
804 the time they rented them until vacated.

Q. But you cleaned the vestibules?

A. Yes we cleaned the vestibules down to the foot of the steps.

Q. And would that situation hold good for all of the apartments or all of the vestibules in that wing?

A. Yes, it was supposed to be every entrance. Every entrance was supposed to be cleaned.

Q. Every Friday?

A. Yes, every Friday or Saturday.

Q. And you either did it yourself or somebody else did it for you?

A. Yes.

Q. Was that the man who usually picked up the paper or trash?

A. Yes.

Q. How many assistants did you have?

A. I never had more than one at a time. We both worked together. Sometimes I didn't have no help. Sometimes I had to do it all by myself. In the winter time we cleaned it more than ever because we had lace curtains up to the windows and doors and in the winter time we had to take those curtains down more oftener than we did in the summer.

805 Q. What curtains do you refer to?

A. I don't know if they are there now but they were on rods and we would put them on the rods and on the side panels on the door.

Q. What door are you speaking of?

A. The front door.

Q. The entrance door?

A. Yes.

806 Q. Now, with reference to this entrance door to

Testimony of Joseph R. Johnson

this apartment, what type of door was that? Was that a wood or glass door? I am not talking about the outside entrance. I am referring to the apartment entrance door. Was it a door similar to these closet doors?

A. You mean coming in from the hall?

Q. Yes, right up here?

A. It was a solid wood door.

Q. Like shown on this?

A. Well, I wouldn't say it was a straight panel door like that, I wouldn't say now, I don't remember whether it was or not, but I should think it would be an ordinary glass door.

Q. Was it thicker than the panels of this closet door or thinner?

A. Oh, you would naturally have it thicker.

Q. Mr. Johnson, have you ever in making your rounds cleaning the vestibules—first, I will ask you, when you clean these vestibules, that would put you opposite the entrance door to the apartment, would it not?

A. No, we didn't do that. We never went up on that landing. The people that lived—I don't know now, whether there was two or three or four steps to go up to that landing. That would be the landing or the hall. We only cleaned the steps down and this vestibule here. That hall, ever who lived in Apartment 1 and ever who
807 lived in Apartment 2 would have to clean that.

Q. To get this properly straightened out, you would go in that outside entrance door.

A. Yes, sir.

Q. And then you would be in a little vestibule there.

A. That's it.

Q. Take a few steps back and you would run into these four steps that you just told about.

A. Yes.

Q. Now those steps led up to this landing or platform that served Apartment 1 in this particular case and Apartment 2.

A. Yes.

Q. You or your helpers would clean those four risers leading up to that landing.

Testimony of Joseph R. Johnson

A. Take a brush—

Q. Take a brush and wash them down?

A. Yes.

Q. Have you at times when you were cleaning those four steps, heard people talking in those apartments?

A. Never did.

Q. You didn't bother about other people.

Mr. Brown: I think he has answered he never did.

Mr. Hogan: I will withdraw that.

808 Q. Now, did you clean these four steps serving Apartment No. 1 and 2 for this apartment at 2735, during the month of October, 1934?

A. I couldn't say. I couldn't say. I don't know.

Q. Well, you regularly cleaned them?

A. Well, I could have cleaned them, yes.

Q. And you now believe that you did?

A. Well, no, I won't say. I wouldn't say yes or I wouldn't say no because I don't remember, and there is no use of me saying yes or no because I don't know about that.

Q. Were you ever away from that apartment building during the latter part of September or the first week of October, 1934? I mean, away on a visit for any time?

A. No.

Q. You were there then.

A. I was there, right there, with my wife—my wife and daughter.

Q. You spoke of your daughter as taking care of the linens. What would she do?

A. Well, she didn't take care of them. I spoke of her helping me carry the linen over to the apartment. The linen we had all in our storage room there, that we kept there, and, of course, that linen we rented out for \$2.50 a month. Of course, the tenants, however, who rented that linen had to pay for having the linen laundered.

809 Q. Did your daughter collect that soiled linen and send it to the laundry?

A. No, we never seen the linen from the time I rented it to a person until they moved out, and when they were going to move out then we went over and checked to

Testimony of Joseph R. Johnson

see that we had everything that belonged to the apartment, the dishes and everything else, the same way with the linen.

Q. Now, in passing by this Apartment No. 2 after the time that you say this man Kennedy rented it from you, did you observe that those shades were drawn?

A. Well, yes. They was drawn all the time practically, but that wasn't nothing, it wouldn't create any suspicion in anybody's mind because a person has got a perfect right to keep their shades down or be away from home. I wouldn't know whether they were there or wouldn't be there.

Q. Did I understand you to say the shades in the bed room and the living room were drawn or just in the bed room?

A. The bed room shades were down and the living room shades was constantly down.

Q. You had two ways of seeing the shades down, by going between the two buildings, that is, between 2725 and 2735. You observed the shades were down in the bed room.

A. That areaway between there, the leaves and the paper would blow up through there, and every week we
810 cleaned that, and you could see, of course I didn't stand there and watch to see if every shade went up or went down. At that time I accidentally went by they would be down, and some of the other apartment shades would be down.

Q. You made a mental note that those shades in that bed room were down.

A. Well, not particularly the bed room. I never paid much attention to it. I noticed the shades was all down. I taken it for granted that the parties wanted the shades down and burn electricity. That was all right because electricity went with the building.

Q. The electricity went as part of the rental?

A. The Electric bill was put—the electric went right along with the rental.

Q. Didn't you complain if they burned electricity in the daytime?

A. No. No. We never complained about anything because if their bill went over \$3.50 they had to pay it.

Testimony of Joseph R. Johnson

They had different meters.

Q. Up to \$3.50 you didn't care what they did, so far as the light burning was concerned.

A. No.

Q. Now, out in the court there, did you in going from these various apartments notice that the shades to the living room of Apartment No. 2 were likewise drawn?

A. When I had occasions to go through, maybe I
811 would have to go to Apartment 11 or some place, you just naturally glance along. You see, of course, I never paid much attention to that, I never paid any attention to it, only the one morning particular when I went through there, that was in October about the day that this thing happened, and the window shade was up I would say twelve or thirteen inches.

Q. —You say the day this thing happened. What do you mean by that?

A. Well, the night that the Federal men come there, they came there that night.

Q. And the morning of that?

A. That morning, and then that night the Federal men came there.

Q. Did you see one or two women in there when you saw this shade?

A. I just seen a lady laying there with her hand—her head on her arm, like this.

Q. Did she have yellow hair or red hair?

A. Well, I never paid—now I didn't stand there because I had no business standing there. I had no business standing there watching people through their windows.

Q. As between black hair and a different color hair, could you say?

A. I couldn't say.

812 Q. You did not see two women?

A. No. No.

Q. How much of the sofa or divan could you see?

A. Just about the roll arm, come up, you know how the arm of a davenport is.

Q. This woman was just reclining there?

A. Just like she had laid down and was tired, just like

Testimony of Joseph R. Johnson

you would lay down, put your arm under your head and rest.

Q. Didn't see any man in there?

A. I didn't stop that long.

Q. What time of the morning was this?

A. That was along, I should say, about 10:00 o'clock in the morning, 10:00 or 11:00 o'clock in the morning.

Q. Now, who lived in Apartment No. 1 at that time?

A. Well, there was a family by the name of Aldridge.

Q. What was his business?

A. He was superintendent for the Adams people there.

Q. Who lived in the apartment on the ground floor back of Apartment No. 2?

A. Now, I just don't remember that woman's name. I won't try to guess at it. I had too many tenants to keep up with them. I couldn't remember all those tenants.

Q. Would you remember this name because it is an odd name—did a man by the name of Van Lanningham live there?

813 A. Well Van Lanningham lived across the court, over in Apartment 10—Mr. Van Lanningham and his wife and little baby.

Q. Who was Mr. Van Lanningham?

A. Well, Mr. Van Lanningham was connected with the F.B.I., finger-print expert.

Q. Is it not true that there was another F.B.I. agent that lived in that apartment?

A. Not as I knew of. If he did, he never did tell me or I didn't know it.

Q. But you knew Mr. Van Lanningham was an F.B.I. agent.

A. I did in a roundabout way. He never told me, his wife never told me, but in a roundabout way I did know it.

Q. Is No. 10 across the court from No. 2?

A. Yes, it is across the court, but down in that far corner.

Q. If he lived in No. 2 he could look diagonally across and see No. 2, is that correct? If he lived in No. 10 he could look diagonally across and see No. 2?

Testimony of Joseph R. Johnson

A. Well, I don't know whether he could see the windows. Just like you look across there, you can see windows, yes.

Q. If he went in the entrance to No. 10 he would pass by there.

814 A. Well, Mr. Van Lanningham was very seldom at home. He would maybe come home and be gone four or five weeks at a time, and his wife and baby would be there.

The Court: Mr. Hogan, let me suggest this. If you can finish with this witness within the next five or ten minutes, we will go ahead, but unless you can I think we had better adjourn. We have gone some half hour more than our usual closing time already. I was in hopes you would get through.

Mr. Hogan: I think I am about through with him, if Your Honor please.

Q. Now, Mr. Johnson, were you taking the Indianapolis papers along about this time?

A. When?

Q. In October, 1934?

A. Well, yes. We practically got the Indianapolis News for the last thirty years.

Q. That's a daily newspaper published in Indianapolis?

A. Afternoon paper; yes, sir.

Q. You read that paper from day to day, I take it.

A. Well, no, I don't even read it now day to day, and I know I didn't read it then from day to day.

Q. Had you read anything in that paper that there had been a kidnapping in Louisville?

A. Well, I just don't recall whether I did or not.
815 but you read a little thing, you might sometimes read something and you wouldn't know anybody interested in the thing, and you just throw it aside. I might have done that. I don't know.

Q. These blinds being down in that apartment on both sides didn't arouse your suspicion in the least?

A. No. I have still—out there where I am at, I go by apartments every day and the blinds are down. They don't bother me one bit. I don't know whether they are

Testimony of Joseph R. Johnson

at home or gone on a vacation. The only time it bothered me there was when I would have to go and collect rents. Out here I don't have to bother about collecting the rent.

Q. Didn't it impress you as being a little bit strange that the shades would stay down from September 22nd to October 16th?

A. Now, I don't know whether they were down all from the 22nd to October 16th or 17. I know they were down every time I had occasion to go through the court or up that areaway there.

Q. With reference to the other tenants, did they likewise keep their shades down on both sides of the apartment?

A. Some of them kept one shade pulled down, some kept some shades just halfway, just pretty nearly any way a woman wanted to keep her house darkened. Now, **816** in the front building there, Mrs. Aldridge, she kept her, what we call the sun parlor, took the whole front in, she kept her shades down pretty nearly to the bottom all the time in the summer.

Q. This was not in the summer.

A. Well, September or October, it wasn't cold. We just started up the furnace I think about a week or ten days before that. We wasn't giving them full heat then. We would put a little steam on and then shut the stoker off.

Q. But the furnace was being operated to a limited extent in October.

A. Yes, because they had to have steam for the tenants that had small children, but we didn't keep it up very long.

Q. Mr. Johnson, did you make a statement to the F.B.I. agents about this matter?

A. Yes, sir.

Q. A lengthy statement?

A. Quite a lengthy statement, yes.

Q. How many pages?

A. Well, I didn't make no seventeen pages, Mr. Hogan.

Q. Why do you mention seventeen?

A. Well, I know what you are going to ask me.

Testimony of Joseph R. Johnson

Q. Tell the court and this jury. We haven't any-
 817 thing to hide. Let's see about it.

A. When you were out to the house, I told you I didn't want to make any statement, and you said why. I said, "Well, I made the statement to the F.B.I." You said, "Did you? Was it very lengthy?" I said, "Well, yes, about seventeen pages." Of course, I was setting in my own living room and I could say pretty nearly anything then.

Q. You go on the theory that dog fight acts better in his own back yard than in somebody else's yard.

A. Well, I halfway believe it.

Q. Seriously now, just how many pages did you give?

A. I really don't know whether it was one page or two pages, but I know at that time I had all the work on my hands and I wasn't feeling any too good anyhow, and when the F.B.I. man taken my statement we went up to the Marrott Hotel and they notarized it, and I don't know, it was taken down in shorthand or on the typewriter, I don't know how many pages it was, I wouldn't try to say whether it was one, two, three or four, or how many.

Q. Let's get along pretty quickly. When did you give that statement?

A. Gave that statement, I think it was the next day after the F. B. I. men came there the next morning, 1934, around October. What day was it?

Q. It would be October 17th then.

818 A. Well, the next morning.

Q. 1934. To what agent did you give that?

A. Well, I don't know that. I think his name was Spears. I think that was his name.

Q. Where is he located?

A. I couldn't say. I never asked the gentleman and I don't know. I don't know whether he was located in Chicago, New York, or Louisville, or Indianapolis, or where.

Q. Did more than one agent take it or just one?

A. No, just Mr. Spears.

Q. You and he were in the room alone?

A. Yes.

Testimony of Joseph R. Johnson

Q. You spoke of the Morat Hotel. What is that?

A. That's a big family hotel there, right up above these apartments. I don't know just exactly if I could tell you how many floors there are in that hotel, but it is quite a refined hotel. The Governor's mansion is just back of it. It is out in the residential section of the city.

Q. Your apartment was in a rather nice neighborhood then.

A. Oh, yes. Yes.

Q. Directly across the street in front of this 2735 is another apartment or apartment hotel.

A. Yes, a nice apartment there.

Q. That's a rather tall building.

819 A. Yes. That's right on the corner of Twenty-eighth and Meridian.

Q. How many apartments were in this 2735, this horse-shoe affair?

A. Sixteen apartments.

Q. Were they mostly rented at that time?

A. When I rented this apartment, that was the only apartment I had vacant at that time.

Q. In other words, there were tenants in all of those sixteen apartments.

A. Yes.

Q. Tenants up above this apartment too?

A. Yes.

Q. And behind it and in front of it.

A. Yes.

Q. And across the way?

A. Yes.

Mr. Hogan: That's all.

Mr. Brown: That's all, Mr. Johnson. You are excused.

The Court: Members of the jury, we will suspend for the day. Do not discuss the matter among yourselves or with anyone, or permit anybody to talk about it in your presence. We will convene tomorrow morning at 9:30.

820 Met pursuant to adjournment and continued with the trial as follows:

The Court: All right, we are ready for the next government witness.

Testimony of Sam K. McKee

SAM K. McKEE was called as a witness by the plaintiff, and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Sam K. McKee.

Q. Where do you live?

A. In Chatham, New Jersey.

Q. Where are you employed?

A. Special Agent in Charge of the Federal Bureau of Investigation.

Q. In what office?

A. Newark, New Jersey.

Q. In 1934, October 1934, were you a Special Agent of the Federal Bureau of Investigation?

A. I was.

Q. Where were you assigned at that time?

A. Chicago, Illinois.

Q. In October 1934 were you assigned to the investigation of the Stoll kidnapping?

821 A. I was.

Q. And in what town were you on the 16th of October 1934?

A. Indianapolis, Indiana.

Q. On that day, the 16th of October, 1934, did you go to any particular apartment there at Indianapolis, Indiana?

A. I did. I went to an apartment at 2735 North Meridian Street.

Q. What was the number of the apartment?

A. Apartment No. 2.

Q. What time did you arrive there?

A. Just after dark.

Q. What was the purpose of your going there?

A. I was sent there along with two other Special Agents for the purpose of ascertaining whether Thomas H. Robinson Jr. was at the apartment or in the vicinity of the apartment.

Q. Did you enter that apartment?

Testimony of Sam K. McKee

A. I did.

Q. Who was in charge of the Special Agents who went to that apartment?

A. I was.

Q. When you entered the apartment, what did
822 you find? Was anyone present?

A. There was no one present.

Q. What did you find there?

A. There were numerous articles in the apartment, wearing apparel, both for males and females. I found a Corona portable typewriter—

Q. (Interrupting) Now what sort or ribbon did that portable Corona typewriter have on it?

A. Black and red.

Q. Was there any book with that typewriter?

A. Yes, sir, there was a regular instruction book contained in an envelope.

Q. I show you that instruction book and a portion of the envelope, and ask you to tell the jury what that is?

A. This is an instruction book for a Corona portable typewriter; and I recall that the envelope had these smudged finger prints all over the outside. This appears to be the same envelope.

Q. At the time you found it in the apartment?

A. That is correct.

Q. I will ask you to file this book with your testimony as government Exhibit No. 47?

A. All right.

(The book above described was handed to the Reporter, marked Exhibit No. 47, and filed with the record.)

823 Q. What was done with the articles that you found there in that apartment?

A. All of the articles were later brought into the Indianapolis Office of the FBI, and an inventory was made of them.

Q. In that apartment, did you find any reading matter?

A. Yes; there were a number of magazines, including

Testimony of Sam K. McKee

one called "Sensational Kidnapping Cases."

Q. I will ask you whether or not you found any message or letter in that apartment?

A. Yes; there was a note contained in an envelope on the dresser in the bed room, addressed to the custodian at 2725 North Meridian.

Q. I will show you that envelope and that letter and ask you if you found that letter in that envelope in the apartment you have described?

A. This appears to be the same note and envelope.

Q. I will ask you to read that letter?

A. (Reading) "To the Custodian—

Mr. Hogan (Interrupting): Now, if Your Honor please, I want to object to that unless they can establish that the defendant wrote the letter.

Mr. Brown: We can connect it up.

824 The Court: I will tell the jury that the letter itself not being signed, as I gather—

Mr. Inman (Interrupting): No, only on the typewriter.

The Court (Continuing): It is not shown who wrote it and, accordingly, the jury will not assume at this time that it was written by the defendant, but you may hear other proof that might bear on the question of its authorship. I think the proof of how and where it was found might be considered by the jury with that warning as to what it is limited to.

Q. First, read the envelope.

A. "The Custodian, 2735 North Meridian, Indianapolis."

Q. Does that bear a United States postage stamp?

A. Yes, a 3c stamp.

Q. All right. Now read the letter?

A. (Reading) "TO THE CUSTODIAN:

"You are a working man. You deserve some consideration.

"There may be a reward for the one who finds Mrs. Alice Speed Stoll who was kidnaped. I know you need the money. I do not want to see a policeman get the reward, as he is an agent of the rich capitalist, and

Testimony of Sam K. McKee

levies his salary and bribes from the capitalists.

825 "Therefore, I want you to discover Mrs. Stoll and get any reward offered. Go to my apartment and you will find her in the closet next to the bath room.

"Offer her my apologies for having to treat her thus, but it was the only way whereby I had time to hide out successfully. I trusted her, as she was a good sport and not like the type of rich, pampered girl I expected. She could even cook.

"Mr. Kennedy, Apt. 2
2735 North Meridian."

Q. I will ask you to file this envelope and this letter as Government Exhibit No. 48?

A. I will.

(The above quoted letter and envelope was handed to the Reporter, marked Government Exhibit No. 48, and filed.)

Q. What other articles did you find there, Mr. McKee?

A. I found several pieces of white adhesive tape 2½ inches wide, with what appeared to be brown hair, dark brown hair sticking to the—

Mr. Hogan (Interrupting): That is objected to unless he shows definitely it was hair.

The Court: Well he can tell what he thought it was.

826 Mr. Hogan: I certainly object to what he thought. That was the objection.

The Court: Well how does he know it is adhesive tape unless he tells you what he thought it was?

Mr. Hogan: My point is that the Federal Bureau of Investigation has ample facilities to determine whether or not it is human hair or other substance.

The Court: I think so, but this man can use his ordinary senses of observation and tell the jury what he found there. He certainly knows whether it was hair. It is subject to cross-examination. I certainly think he can tell the jury what he found there.

Mr. Hogan: It is not what he found that I am objecting

Testimony of Sam K. McKee

to, but what he thought.

The Court: How are you going to describe hair if you don't call it hair? How are you going to describe adhesive tape if you don't call it adhesive tape? All right, don't say what you thought it, was, but what it was.

Q. What was it, Mr. McKee?

The Court: Do you know what it was?

Witness: Yes, sir.

A. It looked to me like it was hair. Dark brown hair. I would say it was hair.

Q. What else did you find?

827 A. Several pieces of insulated wire — several strands of wire probably 6 to 8 feet long.

Q. Where did you find that adhesive tape and that wire?

A. They were in various parts of the apartment, lying around. Some adhesive tape lying on one of the beds in the bed room.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. Mr. McKee, you say the ribbon on this Corona type-writer was black?

A. Black and red.

Q. Is there any question about that? Or are you positive that that is so?

A. That is my recollection.

Q. These fingers prints that you say appear on this envelope, do you know where they came from?

A. No; I do not.

Q. Did you make any test of those?

A. I did not.

Q. Did anybody else of the Federal Bureau of Investigation make a test?

A. I could not state that.

828 Q. So far as you know, they did not?

A. That is correct.

Q. I will ask you to look at that envelope and tell the jury what color those finger prints are that appear on that envelope?

Testimony of Sam K. McKee

A. That appears to me to be purple.

Q. So they did not come off of a black typewriter ribbon did they?

A. No, I would say that came off of a purple carbon paper.

Q. You did not find any carbon paper in that apartment?

A. No.

Q. You did not mention it a moment ago?

A. That is correct.

Q. You did not find any carbon paper there at all, did you?

A. That is correct.

Mr. Hogan: That is all.

JAMES D. REYNOLDS was called by the government as a witness and after having been first duly sworn was examined and testified as follows:

829 Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. J. D. Reynolds.

Q. Where do you live?

A. Louisville.

Q. Where are you employed?

A. At the Reynolds Metals Company.

Q. In what capacity?

A. In charge of production and personnel.

Q. In October 1934 where were you employed?

A. Special Agent for the Federal Bureau of Investigation.

Q. How long were you a Special Agent for the Federal Bureau of Investigation?

A. Six and a half years.

Q. Where was your last assignment?

A. Louisville, Kentucky.

Q. In what capacity?

A. Special Agent in Charge.

Testimony of James D. Reynolds

Q. In charge of the Louisville Office?

A. Yes, sir.

Q. On October 16, 1934, in what State were you assigned?

A. I was on a special assignment at Indianapolis,
830 Indiana.

Q. And what was the special assignment?

A. On the Stoll kidnapping case.

Q. In October, on the 16th or the following day, the 17th, did you examine a Corona portable typewriter?

A. I did.

Q. Where did you examine that typewriter?

A. In the FBI Office, in Indianapolis.

Q. I show you these papers, and ask you to tell the jury what they are?

A. These are typewriting specimens that I obtained from the Corona portable typewriter, Serial No. V5A05229.

Q. What did you write with that typewriter, Mr. Reynolds?

A. I copied the ransom letter involved in this case.

Q. In its exact wording?

A. As I recall that is the exact wording.

Q. How many pages of typewritten material do you have there?

A. Five.

Q. Were they all written by that same Corona typewriter?

A. They were.

831 Q. And all written by you?

A. Yes, sir.

Q. I will ask you to file these five pages with your testimony as government Exhibit No. 49?

A. I will.

(The above described typewriting material is handed to the Reporter, marked Government Exhibit No. 49 and filed.)

Mr. Hogan: That is objected to unless he can identify and show that he had the ransom note

The Court: Did you have the ransom note?

Testimony of James D. Reynolds

Witness: I do not recall whether I had the ransom note or a photostatic copy at the time I copied that.

The Court: Did you have one or the other?

Witness: Yes I did.

Q. Now, did you examine the ribbon on that typewriter?

A. I did.

Q. What kind of a ribbon did it have?

A. It was a ribbon that had two different colors, a red portion and a black portion, the red being the upper portion.

Q. Did you examine the red or upper portion of that ribbon?

A. I did.

832 Q. Was there any typing on that ribbon?

A. There was.

Q. What was that type?

A. There was a portion of a sentence, as I recall, eight or ten words, which were identical with a sentence which appeared in the ransom letter.

Q. Do you recall the exact wording?

A. I do not recall it at this time.

Q. Will you examine government Exhibit No. 49 and see if you are able to recognize those words that appeared on the red portion of that typewriter ribbon?

A. (After reading the papers) I believe this is the sentence that appeared, "Starting the day after the kidnapping we give you five days."

Q. Was that typed in black on the red portion of the ribbon?

A. It was. The sentence was typed and, as I recall, that was the portion of the sentence.

Mr. Hogan: Now let us see about that. How are you going to type in black on the red portion of the ribbon?

Witness: Well, the wording appeared in black. Apparently, it was my deduction, that having typed on the black portion of the ribbon it left black ink on the letters, so when the typewriter was moved up to use the red
833 portion of the ribbon, the black ink left the marking on the red.

Testimony of James D. Reynolds

Mr. Hogan: Do you have that ribbon? Or is it available?

Witness: I do not have the ribbon.

Mr. Hogan: Does the Department of Justice have that ribbon?

Mr. Brown: I think it has been returned to Mrs. Jessie Robinson and perhaps she has it.

Mr. Hogan: Has the government made any effort to get that ribbon?

Mr. Brown: No, sir, we have not.

Mr. Hogan: I think the best evidence is the ribbon itself.

Mr. Inman: The ribbon itself is in the custody of the defendant's mother.

The Court: It has been shown that the government does not have that ribbon.

Mr. Hogan: They have not made any effort to get it.

Mr. Brown: We can issue a subpoena for Mrs. Jessie Robinson.

The Court: Who is Mrs. Jessie Robinson?

Mr. Brown: The mother of this defendant.

The Court: She is here in the hall, isn't she?

Mr. Brown: Yes.

The Court: You can bring her in and ask her if she has got it.

Mr. Inman: All right, bring her in.

834 The Court: Step around here, Mrs. Robinson.

You can stand here behind the stenographer. There are one or two questions they would like to ask you.

Mr. Brown: Mrs. Robinson, was there received by you from the Federal Bureau of Investigation a Corona portable typewriter and ribbon belonging to your son, Thomas H. Robinson, Jr.?

Mrs. Robinson: Yes.

Mr. Brown: Do you have that typewriter ribbon?

Mrs. Robinson: I don't know. I haven't even opened it up. I don't know whether the ribbon is on it or not.

Mr. Brown: Is it here or in Nashville?

Mrs. Robinson: It is in Nashville.

Mr. Brown: Whereabouts in Nashville?

Testimony of James D. Reynolds

Mrs. Robinson: At my home, 1211 Cedar Lane.

Mr. Brown: Can it be sent here?

Mrs. Robinson: I would have to notify my sister.

The Court: I suppose that ought to be done.

Mr. Brown: Yes. Of course, we have no desire for it.
If Mr. Hogan insists on it—

Mr. Hogan: I have no desire for it. I am not trying to prove the Government's case against the defendant.

The Court: You have no desire for it, but it seems you are insisting upon it.

835 Mr. Hogan: I say, Your Honor, the best evidence is the ribbon.

The Court: You still want to renew your objection unless the typewriter is here?

Mr. Hogan: I don't think we need the typewriter here, Your Honor, please.

The Court: What is it you want here—anything?

Mr. Hogan: My point was, that I said, and I say now, that the best evidence of what was on the ribbon or any other article is the article itself.

The Court: I agree with you that is the best evidence, but it isn't here, and if you insist on that evidence being introduced instead of what this witness says about it, we will ask for it to be sent here.

Mr. Hogan: I can foresee that it is going to cause a good deal of trouble, not only to the Government, but to Mrs. Robinson and her sister, so I suppose we not go to that trouble.

Mr. Brown: All right. Thank you, Mrs. Robinson.

The Court: Step aside, Mrs. Robinson.

Mr. Inman: You may examine Mr. Reynolds.

Cross-examination by Mr. Hogan.

Q. Mr. Reynolds, did you visit Apartment No. 2 at 2735 North Meridian Street at any time?

A. I did.

836 Q. Alone or with some other persons?

A. I was there for a very few minutes with other agents.

Q. Would you state who they were?

Testimony of James D. Reynolds

A. I think Mr. R. L. Shivers was there, but I don't recall—I stopped in there for just a few minutes and that was not my assignment.

Q. At what time of the day or night were you in that apartment?

A. I don't recall the exact time.

Q. Was it day or was it night time?

A. It was probably daytime.

Q. Well, was it morning or afternoon?

A. I couldn't say. All I recall is that I did stop in the apartment.

Q. What was your assignment to the apartment?

A. Well, after—after it was learned the location of the apartment and it was told to me that Mrs. Robinson had been held there, and I was in Indianapolis—

Mr. Inman: You mean Mrs. Stoll.

A. (Continuing) Mrs. Stoll—I stopped by the apartment.

Q. Did I understand you to say that you were stationed at Louisville with the F.B.I. up to that time?

A. At that time my official headquarters were in Birmingham, Alabama.

837 Q. When did you go to Indianapolis?

A. The day of the month, I don't recall. It was either Monday or Tuesday.

Q. That would be October 15th or October 16th?

A. As I recall, those are the dates.

Q. Were you in charge of any office on that occasion?

A. I was not.

Q. With what office were you connected?

A. At that time I was officially assigned to Birmingham.

Q. Did you have knowledge when you went to Indianapolis of the location of this apartment?

A. No, sir.

Q. Did your superiors have knowledge of that?

Mr. Brown: I don't know how he could answer that.

Mr. Hogan: If he knows.

A. I would think not.

Q. Why did you go to Indianapolis on the 15th, then,

Testimony of James D. Reynolds

if you didn't have knowledge of this apartment?

A. Now, I don't recall that it was on the 15th. I was assigned to Birmingham, Alabama, and I received a special assignment to work on this case. I went to Nashville and from Nashville to Indianapolis.

838 Q. How far is Birmingham from Indianapolis?

A. Well, I suppose about five hundred miles.

Q. How did you go from Birmingham to Indianapolis?

A. At the time I received my notice to report on this special assignment, I was working out of the Birmingham office and was in Thomasville, Georgia.

Q. And how far is Thomasville, Georgia, from Indianapolis?

A. My itinerary at that time—I drove a car from Thomasville to Macon, and at Macon I was picked up in an Army plane and taken to Nashville. The exact miles I do not remember. It is a matter of a couple of hours.

Q. How long did the trip from Thomasville, Georgia to Indianapolis require?

A. About three days—two or three days.

Q. When you left Thomasville, Georgia, your destination was Indianapolis?

A. Was Nashville.

Q. And when you got to Nashville, what was your destination?

A. When I got to Nashville I worked there for a night, the next day, and then was requested to go to Indianapolis.

Q. When did you leave Nashville?

A. Oh, sometime in the afternoon.

Q. Of what day?

839 A. Probably Monday.

Q. The 15th of October, 1934?

A. If that was the 15th. I do recall I was in Thomasville on Sunday and arrived in Nashville Sunday night.

Q. To refresh your recollection, October 16th, 1934, was Tuesday. Then it necessarily follows, and does follow, that Monday was October 15th, 1934, and Sunday, of course, would have been October 14th, 1934. Now, with those dates in mind, you left Thomasville, Georgia, on what day now?

Testimony of James D. Reynolds

A. What was the date that Mrs. Stoll was released?

Q. October 16th.

A. I left on the Sunday preceding.

Q. That would have been the 14th?

A. Yes, sir.

Q. And you proceeded to Nashville, as you have stated, and reported to your Division Office there, and you left Nashville with an assignment to go to Indianapolis, Indiana.

A. Yes, sir.

Q. Now, what time of Sunday or Monday did you leave Nashville?

A. I left Nashville either Monday—as I recall, Monday evening.

Q. About what time?

840 A. Oh, late afternoon, in the vicinity of 4:00 or 5:00 o'clock.

Q. By what method of transportation did you leave Nashville?

A. Train.

Q. What was your particular assignment? What did they tell you in Nashville to do?

A. I was to take the train at that time and was advised that Mrs. Robinson was planning to take that train.

Q. Now, I believe that with that knowledge, you knew Mrs. Robinson's destination, you knew where she was going, did you not?

A. Not that I recall.

Q. Do you just don't want to recall, Mr. Reynolds?

A. No. That's been sometime and I have had no occasion to recall that information. You must bear in mind that I left Thomasville Sunday and we worked straight through, day and night, and it was my understanding at that time that they expected her to take a train—that train, and it was to be my duty to keep her under surveillance if she did.

Q. Now you said it has been a long time ago and you couldn't be expected to remember details—is that what you mean to convey?

A. No. I remember of the instances of the thing. I

Testimony of James D. Reynolds

can't give you the exact time, the exact instructions. There was considerable activity at that time.

841 Q. But you were able a moment ago to pick out of a two page legal size paper full of words, some fifteen hundred, I believe, some particular words that you say you recall about a typewriter ribbon.

A. I stated I thought those were the words. It so happens that I had occasion to testify concerning that particular sentence at a previous trial related to this case.

Q. I want you to tell the jury whether or not you knew where Robinson's apartment in Indianapolis was located at the time you left Nashville.

A. No. No. I recall that very definitely because there was a lot of work we would not have done if we had had that information.

Q. Your agents had been listening to the phone conversations from Indianapolis to Nashville in connection with this case, had they not?

A. Not to my knowledge.

Q. Did any of the other agents that were working in connection with this case and with you, know Robinson's location in Indianapolis?

A. Not to my knowledge. I wouldn't think so.

Q. Your assignment, then, was to follow Mrs. Robinson, is that correct?

A. When I left Nashville.

Q. And you knew she was going to Indianapolis, 842 is that correct?

A. I don't recall that I received that specific information.

Q. You knew she was headed in that direction, did you not?

A. Yes.

Q. You fairly well knew that she was going to Indianapolis, did you not?

A. She was headed in that direction. Incidentally, the train I took took me to Terra Haute.

Q. Took her there, too, did it not?

A. She was not on that train.

Q. She did go to Terra Haute, though, didn't she?

Testimony of James D. Reynolds

A. I understand that she did. She did not go on the train that I was on.

Q. You mean to say that you lost her?

A. No. She was not on that train.

Q. You were assigned to follow her. Didn't you keep up with her?

A. I was to take the train and if she boarded that train I was to keep her under surveillance.

Q. Did you keep her under surveillance all the way?

A. No. She didn't get on the train I was on.

Q. You mean to say you as an F.B.I. agent lost track of the very person—

843 Mr. Inman: I beg your pardon. He didn't say that, Your Honor.

The Court: No, he didn't say that.

Mr. Brown: If Mr. Hogan wants to stipulate the F.B.I. did lose her, I will be glad to stipulate that they lost her.

Q. You and Mrs. Robinson got on a train, did you not?

A. No, sir. I got on the train. Mrs. Robinson never boarded that train.

Q. What train did you get on?

A. I can't give you the number.

Q. I mean, was it in Nashville or other places?

A. It was a short distance outside of Nashville. I think maybe Murfreesboro.

Q. Guthrie, Kentucky, was it not?

A. I don't recall.

Q. About fifty miles out of Nashville?

A. No. I doubt if it was that far.

Q. Regardless of where it was, she boarded the train, you got on the same train she did.

A. No, that is not true. I boarded the train and she didn't get on that train, it is my understanding, due to a change in their plans or something, but since I was already on the train I was instructed to go on to Indianapolis.

844 Q. Your destination was definitely Indianapolis.

A. My destination was, yes.

Q. When you got to Indianapolis, what did you do?

A. I received a number of assignments. One of the assignments was looking for an automobile that Mr. Robin-

Testimony of James D. Reynolds

son is supposed to have had at that time.

Q. What time did you arrive in Indianapolis?

A. Oh, probably early in the morning, 3:00 or 4:00 o'clock, maybe.

Q. On what day and what date?

A. Tuesday or Wednesday, probably Tuesday.

Q. It must have been Tuesday, Mr. Reynolds, because I believe you testified you were in the Indianapolis office on Tuesday and made the test of this typewriter ribbon. So with that in mind, it was Tuesday, was it not?

A. Did I say that I made the examination of the typewriter ribbon on Tuesday?

The Court: You said you did it on October 16th.

The Witness: Is that Tuesday?

Mr. Inman: Or shortly thereafter.

Q. To your best recollection, you were in Indianapolis on the day that Mrs. Stoll left Indianapolis.

A. Yes.

Q. And you got there about 3:00 or 4:00 o'clock in the morning of Tuesday, October 16th, then.

845 A. I think so.

Q. And did you report directly to the Indianapolis office of the F.B.I.?

A. I did.

Q. That office knew the location of this apartment in question, did it not?

A. Not to my knowledge.

Mr. Hogan: That's all, Mr. Reynolds.

Mr. Inman: That's all.

ARTHUR GUNDERSON called as a witness in behalf of the Government, being duly sworn, was examined by Mr. Inman and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Arthur Gunderson.

Q. Where are you employed, Mr. Gunderson?

Testimony of Arthur Gunderson

A. Meffert Office Supply.

Q. Are you the owner of the Meffert Office Supply Company?

A. Yes, sir.

Q. When did you take over as owner?

A. January 1st.

Q. Of what year?

A. This year.

846 Q. What was the name of the company you took over?

A. Meffert Equipment Company.

Q. Where is that located?

A. 126 S. Fourth.

Q. In Louisville, Kentucky?

A. That's right.

Q. I'll show you this paper and ask you if that is a part of the records of the Meffert Equipment Company.

A. That's right. That's our regular "out order" when we sell or rent or deliver any—

Mr. Hogan: Objected to in its present state. He said he bought the Meffert Equipment Company in this year and he is attempting to say about a record of a prior date there.

The Court: How long were you with them, Mr. Gunderson?

The Witness: I was never with them. I purchased the place the first of the year.

The Court: Did you purchase all the records, too?

The Witness: I purchased all the records.

The Court: This was among the permanent records?

The Witness: This was among the permanent records.

I purchased all the records of all the machines
847 that were sold automatically in with the business.

Q. Was that record made in the usual course of business.

Mr. Hogan: That's objected to. He couldn't possibly know.

The Court: I don't know as this witness would know.

Mr. Inman: He would know if that typewriter record was made.

Testimony of H. C. Richardson

Mr. Hogan: That's objectionable and objected to.

The Court: I believe you better find someone who was with the company at the time to testify as to the records. That would be whatever that date is.

Mr. Brown: I think perhaps that would be better. We will have to do that, of course, on rebuttal, Your Honor. No other witness' name was certified to.

The Court: All right. Step down, Mr. Gunderson.

H. C. RICHARDSON called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. H. C. Richardson.

Q. Where are you employed?

848 A. At DuPont Company, Charlestown, Indiana.

Q. In June of 1931 and July of 1931, where were you employed?

A. Manager of a gas station at Second and Broadway.

Q. And for whom did you manage that gas station?

A. Stoll Oil Company.

Q. In June of 1931, did you meet Thomas Henry Robinson, Jr.?

A. Yes, sir.

Q. Where did you meet him?

A. They sent him from the office to work over there.

Q. What did he do there?

A. He was a gas station attendant.

Q. How long did he work there?

A. About six weeks.

Q. Were you in charge of that station?

A. Yes, sir.

Q. I'll show you that paper and ask you to tell the jury what that is.

A. That's an application for a bond.

Q. And by whom was it executed?

Testimony of H. C. Richardson

A. By Robinson, I think.

Q. Will you examine the signature of the applicant?

A. That's right.

Q. Was that signature written in your presence?

849 A. Yes, sir.

Q. On what date?

A. June of 1931, the 13th.

Q. The 13th of June?

A. Yes, sir.

Q. Who wrote that signature?

A. This?

Q. Yes.

A. Robinson.

Q. This defendant?

A. Yes.

Q. And it is written, Thomas H. Robinson, Jr.?

A. That's right.

Q. Was that filed with the Stoll Oil Company?

A. Yes, sir, or with the insurance company, I don't remember exactly which.

Q. With whom?

A. Either with the insurance company or Stoll. I imagine it was filed with Stoll. I didn't keep it. It was returned to Stoll.

Q. Tell the jury the date as shown by that, the date of birth of Thomas Henry Robinson?

A. May 5th, 1907; age twenty-four.

Q. And where was he born?

A. Nashville, Tennessee, May 5th, 1907.

850 Q. Tell the jury the full name of his wife, as shown by that application.

A. Frances A-l-t-h-o-u-s-e-r. I don't know how you pronounce that.

Q. Althouser.

A. Althouser Robinson.

Q. Tell the jury the name of his father as shown by that application.

A. T. H. Robinson, Sr.

Q. And what address and what town?

A. Deer Park Circle, Nashville, Tennessee.

Testimony of H. C. Richardson

Q. Tell the jury what the defendant at that time indicated his occupation was, from September, 1926, until January, 1929?

A. Vanderbilt University, School of Law.

Q. I will ask you to file that application for bond with your testimony as Government Exhibit No. 50.

(The document referred to was handed the reporter and filed as Government Exhibit No. 50.)

Q. Now, during the time that Robinson was employed at your station, tell the jury whether or not you had occasion to go with him to the Meffert Equipment Company?

A. Yes, sir; I did.

Q. What was the purpose of going there?

A. He traded a typewriter and bought a new one—traded an old one in and bought a new one.

Q. What kind did he buy?

A. I don't remember. It was a small one.

Q. Was it a portable typewriter?

A. Yes, sir.

Q. Were you present when the order for that typewriter was executed?

A. No, I don't believe they delivered it, they had to look up his reference.

Q. Were you there when Robinson signed an order for that typewriter?

A. Yes, sir.

Q. I'll show you that paper and ask you if you recognize it.

A. I have forgotten now, but I guess I did because I remember something about that order. He signed that. I went with him to identify him that he worked for the Stoll Oil Company, was all that I went along for, and they probably called up for his reference after that.

Q. You do not recall the actual signing of the order, is that right?

A. No, sir.

Q. Do you recall what kind of typewriter that ~~was~~?

A. No, sir.

Q. Did you discharge Robinson or fire him from his

Testimony of H. C. Richardson

852 employment at the end of six weeks?

A. No, sir.

Q. How did he happen to leave there?

A. I have just forgotten. He went with some insurance company and just quit.

Q. Did he leave voluntarily or not?

A. Voluntarily; yes, sir.

Q. Did he tell you anything about his next employment?

A. I have forgotten. I believe he said he wanted to get a better job. He talked about an insurance job at that time.

Q. Did you see him after he left there?

A. Well, yes, once in a while I would see him while he was out selling insurance.

Q. Tell the jury what his general appearance was with reference to his work and his appearance around the station.

A. Well, he was a normal man, good appearance, I would say above the average.

Q. Was his work satisfactory?

A. Yes, sir.

Mr. Inman: You may take the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Richardson, Robinson was rather an attractive personality, wasn't he?

853 A. Yes, sir.

Q. He was nine years younger than—I mean, he was twelve years younger than he is today, of course.

A. Yes, sir.

Q. Describe him, as to whether he was tall or short, heavy or lean.

A. He was tall and slim, rather slim.

Q. Young man?

A. Young man, yes, sir.

Q. Neat in appearance?

A. Yes, sir.

Q. Tidy about himself and his work?

A. Yes, sir.

Q. Pleasant?

Testimony of H. C. Richardson

A. Yes, sir.

Q. Had a nice, broad, spreading smile, did he not?

A. Yes, sir.

Q. Black hair?

A. Yes, sir.

Q. Kept himself and his hair well groomed?

A. Yes, sir.

Q. He was an asset to the station, was he not?

A. Well, I guess you would call it, if you want to call it neatness.

Q. Well, he engendered a good feeling around
854 the customers, did he not?

A. Yes, sir.

Q. He did not wear glasses then, I believe.

A. No.

Q. Just a handsome young man, wasn't he?

A. Yes, sir.

Q. Attractive to the ladies?

A. Well, I don't know. I couldn't say that.

Q. He was the type that would be, wasn't he?

A. I don't know, I am no lady.

Q. Well, was he courteous to the customers?

A. Yes, sir.

Q. Particularly to the women customers?

A. Well, I wouldn't say that either. He was nice to them all.

Q. I mean, he was not offensive to either men or women customers.

A. That's right.

Q. And what were his duties there?

A. Well, to service cars for gas and oil.

Q. Put gas in a tank?

A. Yes, sir.

Q. And examine the oil to see if it need replenishing or draining?

A. Yes, sir.

855 Q. Put water in the cars?

A. Put water in the cars.

Q. Do the usual duties of a filling station attendant?

A. Yes.

Testimony of H. C. Richardson

Q. That station was located at Second and Broadway?

A. Yes, sir.

Q. Who was the service station supervisor or superintendent?

A. You mean of all the stations?

Q. Yes.

A. I believe a fellow of the name of Adams. I have forgotten.

Q. Didn't at that time Mr. Berry Stoll have charge of the operation of the filling stations throughout the city?

A. No, sir.

Q. He had some connection with them, of course.

A. Well, yes, I guess he did.

Q. He had general supervision over them?

A. Well, there were four of them, and one of the boys would take the service stations and some of them the refinery and supervised that more so. He didn't take much active part in the service station end of it.

Q. Mrs. Stoll used to come in that station, did she not?

856 A. Yes, sir.

Q. And Robinson serviced her car, did he not?

A. No, I think not. She never bought gas from us.

Q. I believed you stated she did come to that station.

A. Parked her car; yes, sir.

Q. Frequently?

A. Well, about twice a week, I'll say.

Q. Did you operate or did that station operate a parking lot in connection with its filling station?

A. Yes, sir.

Q. And that was behind or to the side of the filling station office?

A. That's right.

Q. Did she see Mr. Robinson there on those occasions?

A. Well, it is possible; yes, sir.

Q. It is very possible that she did?

A. Yes, sir.

Q. She knew who he was?

A. I don't think so.

Q. She knew he was there working?

Testimony of H. C. Richardson

A. I wouldn't think so.

Q. Well, he was working there at the time she was parking her car there.

A. That's right.

857 Q. How many attendants did you have there then?

A. I don't remember. There were two service attendants, and then there was in the grease department that done the greasing and changing oil.

Q. Was there any other attendant there of the physique or build of this defendant?

A. No.

Q. He was the most attractive one of your attendants?

A. I don't know about that.

Q. Well, those that greased cars were usually pretty greasy, weren't they?

A. Well, they might be in the afternoon. They looked pretty good in the morning.

Q. When would Mrs. Stoll usually park her car there, afternoon or morning?

A. Well, in the afternoon mostly.

Q. So these grease attendants would usually be rather greasy by the time she parked her car there.

A. Well, I don't know.

Q. Well, if your reasoning is correct, and I know it is, that in the afternoon they were pretty well greasy then by the time she parked her car, they would be greasy then?

A. Yes.

858 Q. And they usually stayed around the grease rack, did they not?

A. Yes, sir.

Q. Robinson's duties were out at the pumps and to service cars at the pumps?

A. Yes, sir.

Q. Did he look after the parking lot also?

A. Yes, sir.

Q. What duties did he have in connection with the parking lot?

A. Well, the only thing is to give tickets and collect the money, give them a parking ticket.

Testimony of H. C. Richardson

Q. That was a part of his duties?

A. That's right.

Q. And he was there for six weeks?

A. Yes, sir.

Q. And during that six weeks period, you state that Mrs. Stoll came there on an average of twice a week and left her car there?

A. Yes, sir.

Mr. Hogan: I believe that's all.

Redirect Examination by Mr. Inman.

Q. When Mrs. Stoll parked her car, did you give her a ticket like an ordinary customer?

859 A. No, sir.

Q. That was not the only six week period that Mrs. Stoll parked at that station, was it?

A. No. She parked there all the time.

Q. Before that?

A. Before that; yes, sir.

Q. After that?

A. Yes, sir.

Recross-examination by Mr. Hogan.

Q. What kind of car did she drive at that time?

A. Packard coupe.

Q. Any other kind?

A. I don't think so. I don't remember any other kind.

Q. Did she have an individual car that she used?

A. Yes, sir.

Q. Did Mr. Berry Stoll ever come around the station?

A. Yes, sir; not often.

Q. What kind of car did he drive?

A. He would come when they would come in at night sometimes, he would come in that Packard coupe with her, but I don't remember exactly what kind of car he drove.

Q. When he came in the daytime, would he come
860 in a different car than this Packard coupe?

A. Yes, sir.

Q. So she had a car that she used of her own.

Testimony of H. C. Richardson

A. Yes, sir.

Mr. Hogan: That's all.

Redirect Examination by Mr. Inman.

Q. I think I understood this, that you said she did not buy gasoline at your station?

A. That's right.

Mr. Inman: That's all.

ALBERT E. FARLAND called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. A. E. Farland.

Q. Where are you employed?

A. Special Agent of the F.B.I. at Kansas City, Missouri.

Q. How long have you been Special Agent, Mr. Farland?

A. About twenty-five years.

Q. On July 1st, 1936, to what field office were
861 you assigned?

A. Kansas City, Missouri.

Q. The same field office where you now work?

A. Yes, sir.

Q. On July 1st, 1936, did you see the defendant, Thomas Henry Robinson, Jr.?

A. Yes, sir.

Q. Where did you see him?

A. At the Federal Penitentiary at Leavenworth, Kansas.

Q. I'll show you a letter dated July 1st, 1936, addressed to Mr. W. A. Smith, Special Agent, Federal Bureau of Investigation, Kansas City, Missouri, signed Thomas H. Robinson, Jr. I will ask you if that letter was written in your presence.

Testimony of Albert E. Farland

A. Yes, sir.

Q. Who wrote that letter?

A. Mr. Robinson.

Q. This defendant?

A. Yes, sir.

Q. In his own handwriting?

A. Yes, sir.

Q. Did you see him write it?

A. Yes, sir.

Q. Did he write the entire letter?

862 A. He wrote the entire letter and I witnessed it.

Q. With the exception of your signature and the word "witness" above it—

A. I wrote the "witness" myself.

Q. You wrote the "witness".

A. Yes.

Q. And "A. E. Farland, U.S.D. of J., Kansas City, Missouri."

A. That's right.

Q. Other than those few words, did Robinson, Jr., this defendant, write all other words on this paper?

A. He did.

Q. I will ask you to file that with your testimony as Government Exhibit No. 51.

Mr. Hogan: Before that is done, I am going to seriously object to that, and I think maybe we better be heard on that question, if Your Honor please, because it contains matters that might incriminate him.

The Court: I will hear you. Come forward.

Q. Mr. Farland, how did this letter happen to be written? By that I mean, did you request it or direct it, or was it freely and voluntarily given?

A. He wanted to have that—

Mr. Hogan: Wait a minute.

The Court: Was it requested by you or anybody?

863 The Witness: No, sir.

Q. Whose idea was it?

A. Robinson's.

Q. Did you suggest to him the writing of the letter or did he suggest the writing of the letter?

Testimony of Albert E. Farland

A. I believe when he wanted that piece of property disposed of he mentioned the fact and I told him to write the order out for it and I would turn it in.

Q. Were any threats or force used to secure this letter from him?

A. No, sir, absolutely not.

Q. And it was only after he expressed a desire that the letter was written?

A. Yes, sir.

The Court: No promises of any kind made in any way?

A. No, sir.

The Court: Mr. Hogan wants to be heard further on it, and it is time to take the recess anyhow. I will hear you in chambers, Mr. Hogan.

Members of the jury, we will take a short recess. Do not discuss this case among yourselves or with anybody, or permit anybody to discuss it in your presence.

Mr. Marshal, give us a ten minute recess.

864 After recess the following proceedings were had:

Direct Examination Continued by Mr. Inman.

Q. I believe the last question I asked you was to file this with your testimony as government Exhibit No. 51. Is that right?

A. Yes, sir.

The Court: I understand, Mr. Inman, in view of our conference, which resulted in part of the letter being covered up, that Mr. Hogan withdrew his objection.

Mr. Hogan: Yes, Your Honor.

The Court (Continuing): And for the present I understand that the letter is being offered for the purpose of having a known specimen of the defendant's handwriting?

Mr. Hogan: Yes; and for no other purpose.

The Court: At the present time.

Mr. Brown: For no other purpose at this time.

(The letter above described is handed to the Reporter, marked government Exhibit No. 51, and filed with the record.)

Testimony of Albert E. Farland

Q. I will ask you to read to the jury that portion of that letter that is not covered by the paper?

The Court: Now, Mr. Inman, stand behind him so he doesn't by mistake get anything wrong.

(Mr. Inman stands by the witness.)

865

A. (Reading)

"July 1, 1936.

"Mr. W. A. Smith
Special Agent, Federal Bureau of Investigation
Department of Justice
Kansas City, Missouri.

"Dear Sir:

"Would you please turn over to my mother, Mrs. Thomas H. Robinson Sr., all of my personal effects that are free and unattached.

(Signed) "Thomas H. Robinson Jr.

Witnessed: A. E. Farland
U.S.D. of J.
Kansas City, Mo."

Mr. Inman: That is all.

Mr. Hogan: No questions.



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TRANSCRIPT OF RECORD.

Thomas Henry Robinson, Jr., - - - - Plaintiff,
v.
United States of America, - - - - Defendant.

TRANSCRIPT OF EVIDENCE (Continued).

Louisville, Kentucky,
November 29, 1943.

Heard before:

Honorable Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, at Louisville,

and a jury.

Appearances:

Eli H. Brown III, United States Attorney, and
J. D. Inman, Assistant United States Attorney, for the plaintiff.

Robert E. Hogan, Kentucky Home Life Building, Louisville, Kentucky, for the defendant.

MRS. R. L. HARRIS was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Mrs. Raymond L. Harris.

Q. Do you live at Mellen Place, Knoxville, Tenn.?

A. Yes.

Q. Where are you employed?

Testimony of Mrs. R. L. Harris

866* A. At the Tennessee Valley Authority.

Q. In what capacity?

A. Personnel Officer.

Q. Do you have in your charge and under your control the personnel files of the Tennessee Valley Authority?

A. I do.

Q. I will show you this paper, marked "Preliminary and Declaration Sheet", and ask you if that is a part of the records of the Tennessee Valley Authority?

A. Yes, it was.

Q. What is that record, Mrs. Harris?

A. The Tennessee Valley Authority gave what we call workmen's examinations in 1933 as a means of building up a register to recruit workmen to build some dams that we had contracted. Persons who took these examinations completed one of these forms. And this form has a number on it.

Q. What is that number?

A. 55629.

Q. What is the date of that form?

A. December 9, 1933.

Q. And what was the place of examination?

A. Nashville, Tennessee.

Q. Now, whose application is that?

A. Thomas H. Robinson, Jr.'s.

867 Q. And what is the address?

A. 1716 Ashwood Avenue, Nashville, Tennessee.

Q. Now is that form filled out on the typewriter?

A. No. It is filled out in pen and ink.

Q. In hand-printing?

A. Yes, sir.

Q. I will ask you to file that application with your testimony as government Exhibit No. 52.

Mr. Hogan: Now, if Your Honor please, that is objected to on this ground and for this reason: It is not pertinent to any issue raised in this indictment, and it has no bearing whatsoever on any charge or accusation or

*Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of evidence.

Testimony of Mrs. R. L. Harris

allegation in this indictment.

Mr. Inman: We will show the competency of it.

The Court: Is it offered for a specimen of handwriting?

Mr. Inman: It is offered as a specimen of handprinting.

The Court: I will have to take counsel's assurance that it will have some connection with the testimony. Of course, if it doesn't, your objection will be sustained but I cannot tell at this time what its pertinency is.

Mr. Hogan: If they attempt to connect it up, then we will meet the issue, or try to, at that time.

The Court: All right.

868 Mr. Inman: That is all.

Mr. Hogan: I certainly do not want to make competent otherwise incompetent testimony, so there are no questions.

The Court: Mrs. Harris, did you say that was made out in your presence?

Mrs. Harris: No, sir.

The Court: Did you see it signed?

Mrs. Harris: No, sir.

The Court: Was it given to you by anyone?

Mrs. Harris: It was given to me as a part of the official personnel file of the Tennessee Valley Authority.

The Court: Who gave it to you?

A. I asked the office to send me the personnel file of Mr. Robinson, and it was in that file when I received it.

The Court: No, I mean when it was filled out?

A. No.

The Court: When was the first time you saw it?

A. When I asked for the personnel file when the information was requested of me.

The Court: You mean a few years ago?

A. I may have seen it a few years ago, but I do
869 not recall it now.

The Court: Oughtn't there to be some other evidence?

Mr. Brown: There will be.

The Court: It will be kept in the minds of the jury for

Testimony of Mrs. John Peiffer

the present.

Mr. Brown: We will introduce handwriting experts on that, Your Honor.

The Court: All right.

MRS. JOHN PEIFFER was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Mrs. John Peiffer.

Q. Where do you live?

A. 1547 West Main Street, Springfield, Ohio.

Q. In October of 1934 did you live at that same address?

A. That's right.

Q. Did you carry on any business at that address?

A. A tourist home.

870 Q. A tourist home?

A. That is right.

Q. In October 1934 did you maintain a book for your guests to sign?

A. That's right.

Q. I will show you this page and refer you to the last entry and ask you to tell the jury what that is?

Mr. Hogan: Now that is objected to, because all this witness has said is that she kept a record.

Q. I will ask you if that is a part of the book about which you have just testified?

A. That's right.

Q. Is that a part of the book that you maintained for your guests to sign?

A. That's right.

Q. Was that book kept in the usual course of your business there?

A. That's right.

Testimony of Mrs. John Peiffer

Q. Refer now to the last entry, and tell the jury what that is?

Mr. Hogan: Now that is objected to unless she shows the date.

Mr. Brown: If she knows the date.

Mr. Inman: We will get to that in just a minute—one thing at a time, Mr. Hogan.

871 Mr. Hogan: We have to get to that right now because that date is really important.

The Court: Is there any date on there?

Witness: I don't know. No, there is no date.

The Court: Have you any way of fixing the date?

Witness: No. It was in October but I could not say the exact date.

The Court: Of what year?

Witness: 1934.

The Court: You know that?

Witness: I am almost positive, yes.

Q. I will ask you what the last entry on that page is?

Mr. Hogan: I still renew my objection. October has 31 days in it and it could have been any day so far as the record now stands.

Mr. Inman: We will show by other evidence what the date of it is.

The Court: I don't know that a witness has to identify a particular day so long as she can get pretty close to the day. A month in 1934. Do you have any way to identify the date more definitely?

Witness: No; it was in October is all I can remember.

The Court: Do you know what day it was?

872 Q. Do you know what day of the week it was?

A. On Tuesday.

Q. All right—

The Court: Will there be some other evidence to more closely identify the exact date?

Mr. Inman: Yes, Your Honor.

The Court: All right.

Mr. Hogan: If your Honor please, I suggest that that entry be withheld until they do connect it up.

Mr. Inman: We will connect it by the next witness.

Testimony of Eli Bright

The Court: Well let this witness step aside for the moment and put on the next witness.

Mr. Inman: All right.

ELI BRIGHT was called by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Eli Bright.

Q. Where are you employed?

A. Springfield Police Department, Springfield, Ohio.

873 Q. Were you employed by that department in October 1934?

A. Yes.

Q. Do you have the records of October 18, 1934, with you?

A. Yes, sir.

Q. Will you refer to that record?

A. Yes, sir.

Q. Did you have any occasion on October 18, 1934 to go to 1547 West Main Street, Springfield, Ohio?

A. Yes, sir.

Q. Who lives at that address?

A. Mrs. Peiffer.

Q. When you got to that address, what did you do and what did you see?

A. We found a 1934 Ford coach in the garage.

Q. What was the motor number of that Ford coach?

A. The motor number was 18-574-117.

Q. With reference to the "18", Mr. Bright, what did that indicate?

A. That is a prefix on the model of the car.

Q. On all Ford cars?

A. Yes, V8's.

Q. What license plate did that car have on it

Testimony of Eli Bright

874 at that time?

A. It had an Indiana license plate, 504-519.

Q. Did you examine the glove compartment of that car, Mr. Bright?

A. Yes, sir.

Q. What did you find?

A. I found a clip for a 45 automatic pistol, loaded.

Q. What did you do with that automobile?

A. It was ordered towed into our police garage.

Q. Was it later released to anyone?

A. It was released to Purvis, an Agent of the Federal Bureau of Investigation.

Q. Melvin Purvis?

A. That's right.

Q. Did you go into Mrs. Peiffer's house?

A. Yes, sir.

Q. Did you go into any room in that house?

A. Into a room on the second floor, yes.

Q. What did you find there?

A. I found a black suitcase, a cheap suitcase, and an oxford gray top coat, and there was also a magazine. I don't recall what magazine.

Q. And that occurred on October 18th?

A. Yes, sir.

Q. 1934?

875 A. Yes, sir.

The Court: Did you find just a clip, or did you find a pistol, too?

Witness: Just the clip.

The Court: There was no pistol?

The Witness: No.

Cross-examination by Mr. Hogan.

Q. Did you find anything else in this car?

A. There was a newspaper in the car. Also, a leather container for a driver's license or registration certificate.

Q. Did you find anything else in the room?

A. Not that I recall.

Q. Do you know how long that car had been there of

Testimony of Mrs. John Peiffer

your own knowledge?

A. No, sir.

Mr. Hogan: That's all.

MRS. JOHN PEIFFER was recalled by counsel for the government and testified as follows:

Direct Examination Continued by Mr. Inman.

Q. Mrs. Peiffer, I will ask you if you recall an
876 occasion in October 1934 when Mr. Eli Bright, of the Springfield, Ohio, Police Department came to your home?

A. That's right.

Q. And I believe they took an automobile from your garage.

A. That is right.

Q. With reference to that day, when was the entry made in your guest book that I have just asked you about.

A. Well it was on Tuesday but I can't remember the exact date.

Q. Was it the Tuesday before Mr. Bright came to your house?

A. That is right.

Mr. Hogan: Now I suggest that is leading the witness. She said she did not know.

The Court: Well, the question is leading, but I think it is for saving time and I do not see how it could be prejudicial to your client. Were you able to know of your own knowledge that it was anywhere close to the time Mr. Bright came there?

A. Yes, it was two days before he came down. He came on Thursday.

Q. Now will you read that last entry?

A. "Doken" isn't it?

877 Q. What is the first name?

A. I don't know. "South Bend, Indiana". I can't read that. It would be Jno. or Jony.

Q. I will ask you to read that to the jury?

Testimony of Mrs. John Peiffer

A. I don't know what that first name is.

Mr. Hogan: Wait a minute.

Mr. Brown: I confess she doesn't have to read the name to show it to the jury.

Witness: I can't make it out.

Mr. Hogan: It hasn't been established who wrote it, yet.

Q. Was that made by a guest at your home?

A. That is right.

Q. What time of the day or night did that guest arrive?

A. Along sometime in the afternoon.

Q. Have you seen that person since?

A. Yes.

Q. Who was he?

A. Mr. Robinson over there.

Q. Did he write that in your book?

A. That is right.

Mr. Hogan: The objection is renewed, unless she brings the complete book of which that page was a part.

The Court: What purpose does that have? I
878 think you could bring it out on cross examination if it would serve any purpose. Have you got the book, Mrs. Peiffer?

Witness: Yes, sir.

The Court: Where is it?

Witness: At home.

Q. When was that page torn from that book?

A. On Thursday when the police came down they took it out.

The Court: Mr. Hogan, do you want that book?

Mr. Hogan: No.

The Court: It is not necessary for the government to have it. But if you want it, we will bring it in for you.

Mr. Hogan: No, I don't want it; I want to keep it out.

The Court: Well let the record show that if he wants the complete book on cross-examination we will ask the witness to produce it.

Mr. Inman: Do you want her to send for that book?

Mr. Hogan: Are you through with the witness?

Testimony of Mrs. John Peiffer

Q. I will ask you to file this page with your testimony as Government Exhibit No. 53?

The Court: Let me see it.

Mr. Inman: All right (handing paper to Court.)

879 Mr. Hogan: That is objected to, Your Honor.

The filing of it.

The Court: What is the basis of your objection?

Mr. Hogan: The same as before. That is not a complete record, and the witness herself is not able to identify—that is, the record itself has no identification as to date.

The Court: Objection overruled.

Mr. Hogan: Exception.

(The page described above is handed to the Reporter, marked Government Exhibit No. 53, and filed with the record.)

Q. How long did Robinson stay at your home that day, Mrs. Peiffer?

A. About 15 minutes.

Q. Did you have any conversation with him?

A. Nothing much—he just wanted a room and a garage to put his car in, is all.

Q. What car did he have?

A. It was a Ford.

Q. With reference to the car that Officer Bright took away from there, was that the same automobile?

A. That is right.

Q. The one that Robinson drove there?

A. That is right.

Q. Did you have any conversation with him at the time he rented the room?

880 A. No. He just asked for a room, and I let him have a room; and that is all.

Q. Did you have any conversation with him relative to the time he would return that night?

A. Yes; he said he would be in late and that he wanted to know how he would get in and I told him that I would leave the door open for him.

Q. Did you have any conversation with him in connection with his employment? Did he tell you what he was

Testimony of Mrs. John Peiffer

doing?

A. No.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. Mrs. Peiffer, where were you when you first saw Robinson?

A. I was cleaning the sidewalk off with a hose.

Q. Did you then operate a filling station?

A. Oh no, a tourist home.

Q. A tourist camp?

A. No; a tourist home. Not a camp.

Q. And was that located in the main part of Springfield?

A. That's right. It is on 40—a national highway.

881 Mr. Inman: U. S. Highway 40?

Witness: That's right.

Q. Did you have a row of garages in connection with your tourist home?

A. No. I just had one.

Q. Did you have a car of your own?

A. No.

Q. Did any other guests have cars there at that time?

A. No. They had them, but they always told me if anybody came in and insisted on a garage I could let them have it as long as I watched their stock that was in the garage.

The Court: Mrs. Peiffer, how long did he stay there? Did he come back that night?

Witness: No. He was there about 15 minutes; that's all.

The Court: And he did not return that night?

Witness: No.

J. L. BOWLING was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Testimony of J. L. Bowling

Direct Examination by Mr. Inman.

Q. State your name to the jury?

882 A. Joseph L. Bowling.

Q. Where are you employed?

A. At the Waldorf Astoria.

Q. Is that a hotel?

A. It is a hotel in New York City.

Q. In what capacity are you employed there?

A. Front Office Manager.

Q. How long have you been employed there at that hotel?

A. Since August 17, 1931.

Q. In 1936 were you employed by that hotel?

A. Yes I was.

Q. Are you acquainted with the record system of that hotel?

A. Yes, sir.

Q. As Front Office Manager, do you have under your control and your custody the guest registration cards?

A. Yes, sir.

Q. Are the original registration cards for the year 1934 and 1935 in existence?

A. No, sir; they have been destroyed.

Q. Were they destroyed in the usual course of business?

A. No. A decision was made to destroy all of the cards about a year ago.

883 Q. I will show you this photostat and ask you to tell the jury if you recognize that?

A. Yes, I do.

Q. What is it?

Mr. Hogan: That is objected to until this witness is further identified.

The Court: Until this witness is further identified?

Mr. Hogan: Yes, Your Honor.

The Court: How do you mean, further identified? He has given his name.

Mr. Hogan: They have not shown his address.®

Q. What is your address?

Testimony of J. L. Bowling

A. My home address is 861 East 21st Street, Brooklyn, New York.

Mr. Inman: Is his address properly identified?

Mr. Hogan: It is now.

Q. What is that?

A. Registration card—photostatic copy.

Q. Of what hotel?

A. Waldorf Astoria.

Q. Are those photostats made in the usual course of business?

A. Yes, sir; they are.

Q. What is the date of that registration card?

884 A. It looks like December 30, 1934.

Q. And what is the name of the guest?

A. T. M. Warner.

Q. What address?

A. The address I can't make out except the word "Drive".

Q. Come over here in the light and look at it?

A. I still can't read it.

Q. I will ask you if that is "Owentsia"?

A. I couldn't say that, honestly.

Q. All right, resume your seat. What is the city shown as the residence of the guest?

A. Oak Forest, Illinois.

Q. See if that is "Lake Forest"?

A. That's right. I am sorry—Lake Forest.

Q. I will ask you to file that card with your testimony as government Exhibit No. 54?

Mr. Hogan: That is objected to because it has not been shown any connection between that card and this defendant.

Mr. Inman: That will be established.

The Court: Mr. Bowling, was it the usual course of business for your hotel at that time to make guest cards as regular records of the hotel?

885 A. Yes, sir, it was.

The Court: And was the original of that card made in the usual course of business?

Witness: Yes, sir.

Testimony of J. L. Bowling

The Court: At the time when the act occurred? That is, when the guest registered?

Witness: Yes, sir.

The Court: Counsel assures us that there will be a connection made. Of course, if there is no connection shown, the Court will sustain your objection and the card will have no place in this case. The jury will understand that it is being filed subject to it being connected up later in some way by testimony to the case itself.

(The above described registration card was handed to the Reporter, and marked Government Exhibit No. 54, and filed.)

Cross-examination by Mr. Hogan.

Q. You do not know who wrote that card or who signed for that?

A. No, sir; I do not.

Mr. Hogan: That is all.

886. WILLIAM TOUCHER was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. William Toucher.

Q. Where do you live?

A. Hotel St. George, in Brooklyn.

Q. New York?

A. Yes, sir.

Q. Are you employed at the St. George Hotel?

A. I am.

Q. In what capacity?

A. Assistant Manager.

Q. As Assistant Manager do you have in your custody and under your control the guest registration cards of the St. George Hotel?

The Court: Where is that? In Brooklyn?

Testimony of William Toucher

Witness: Yes, sir.

A. Yes, sir.

Q. Were you employed by that hotel in January of 1935?

A. Yes, sir; I was.

887 Q. In what capacity?

A. As Credit Manager.

Q. Are you familiar with the records of that hotel and the guest registration cards of that hotel?

A. Yes, sir.

Q. Are the original records of 1935, the original guest registration cards, in existence?

A. No, sir, they have been destroyed.

Q. Was it part of your regular practice at that hotel in 1935 to require the execution of a guest registration card?

A. Yes, sir.

Q. I show you this photostatic copy and ask you to tell the jury what that is?

A. It is a registration in the name of T. Morton Wallace, 320 North Ridgland Avenue, Oak Park, Illinois.

Q. What is the date of that registration?

A. January 10, 1935.

Q. Is that a part of the records, that is, the original of that, is that a part of the records of the Hotel St. George?

A. Yes, sir.

Q. Made in the usual course of business?

A. Yes, sir.

Q. Was the original made of that at the time of 888 the registration of that guest?

A. Yes, sir.

Q. Can you tell from that the length of time that guest stayed at the hotel?

A. No, sir, I can't.

Q. Did you see the guest, T. Morton Wallace?

A. No, sir.

Q. I will ask you to file this with your testimony as government Exhibit No. 55?

A. I will.

Testimony of William Toucher

Mr. Hogan: The same objection, unless it is further connected up.

The Court: All right.

(The above described document is handed to the Reporter, marked government Exhibit No. 55, and filed.)

Cross-examination by Mr. Hogan.

Q. How do you spell your name?

A. T-o-u-c-h-e-r.

Mr. Hogan: That is all.

ALBERT E. PATTERSON was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

889 Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Albert E. Patterson.

Q. Do you live at 60 School Street, in Boston, Massachusetts?

A. I do.

Q. In what business are you engaged at the present time?

A. I am an Engineer for the United States Navy.

Q. In April 1935, where were you employed?

A. I was in the automobile business, at Woodhaven New York, for Patterson & Smith, Inc.

Q. I will show you a paper and ask you to tell the jury what that is?

A. That is an order for a car, a Plymouth four-door sedan, signed by Leslie K. Burgess.

Q. Of what company is that a record?

A. The Patterson & Smith, Inc., for whom I worked.

Q. Is that one of the usual records of that company?

A. Yes, sir.

Q. By whom was it made?

A. It was made by Leslie K. Burgess and witnessed

Testimony of Albert E. Patterson

by myself.

890 Q. At the time the transaction occurred?

A. At the time he ordered the car.

Q. What was the date of that order?

A. April 5, 1935.

Q. And what car was ordered?

A. A Plymouth four-door sedan.

Q. At what price?

A. \$799.00.

Q. And how was that price arrived at?

A. \$784.50 for the automobile, and \$14.50 for license plates.

Q. Was any cash payments made?

A. A cash deposit on placing the order, of \$150.00.

Q. Leaving a balance of what?

A. \$649.00.

Q. Was that signed by the purchaser, Leslie K. Burgess in your presence?

A. It was.

Q. Did you sign it as a witness?

A. I did.

Q. Did you deliver the car to him?

A. At that time?

Q. At any time?

A. I did deliver a car to him.

Q. I will show you this record, and ask you what
891 that is?

A. That is a record of the particular automobile by serial number that was delivered to him the following day, April 6th.

Q. 1935?

A. 1935.

Q. What automobile was delivered?

A. A Plymouth four door sedan No. 2404540, that is the serial number. Motor No. PJ11573.

Q. How was the balance, the \$649.00, paid?

A. I couldn't tell you. Cash or a certified check was the agreement and evidently it was paid in either of those two ways, which, I would not know.

Q. I will ask you to file the order dated April 5, 1935,

Testimony of Albert E. Patterson

as government exhibit No. 56; and the record of the delivery of the automobile on April 6, 1935, as government Exhibit No. 57?

Mr. Hogan: I object to government Exhibit No. 57 being introduced, because it has not been established that that record was kept in the regular course of business.

Mr. Inman: I submit it hasn't.

Q. With reference to that record, was that a part of the records of Patterson & Smith, Inc.?

A. This envelope file record was always made out immediately upon receipt of any order.

892 Q. Who made that out?

A. I did; personally.

Q. Was that made out in the usual course of business?

A. Yes.

Q. At the time the transaction occurred?

A. Immediately after the placing of the order.

The Court: And it was a part of the usual course of business of that company to make such a record?

Witness: Yes, sir.

Mr. Hogan: If Your Honor please, it was always the custom, but he did not say it was done in this particular case.

Mr. Inman: We have him here in this particular case.

The Court: Was it done so, in this particular case?

Witness: Yes, Your Honor.

Q. Are you able at this time to identify Leslie K. Burgess?

A. I am not.

(The documents referred to were handed to the Reporter, marked Government Exhibits Nos. 56 and 57, and filed.)

Mr. Hogan: No questions.

893 FRED SCHMIDT was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Testimony of Fred Schmidt

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Fred Schmidt.

Q. Where do you live?

A. 4542 Fortieth Street, Long Island, New York.

Q. Where are you employed?

A. O'Brien & Walsh, at 40th Street.

Q. In what capacity?

A. Superintendent.

Q. Superintendent of what?

A. Thirty-six six-room family houses.

Q. Did you have charge of the premises at 4547 Fortieth Street, Long Island, New York?

A. That is right.

Q. And did you have charge of those premises in the year 1935?

A. That is right.

Q. Is there an apartment in that building known as Apartment No. 3, rear?

A. Yes.

Q. In April of 1935, I will ask you whether or not you had a tenant by the name of Mr. and Mrs. Burgess?

A. I knew a tenant by the name of Mr. Burgess.

894 Q. Mr. Burgess?

A. That is right.

Q. How long did Mr. Burgess live at that apartment, Mr. Schmidt?

A. About 4 weeks.

Q. When he left did he give notice?

A. No, he did not report to the office before the check-out.

Q. Have you seen that person known to you as Mr. Burgess since?

A. That's right.

Q. Is he in the court room?

A. That is Mr. Burgess (pointing to Robinson.).

Q. Thomas Henry Robinson Jr.?

Mr. Hogan: That is certainly suggestive.

Mr. Inman: He pointed right at him.

Testimony of Fred Schmidt

Mr. Hogan: He pointed toward the window.

Q. Will you get down close?

A. That is Mr. Burgess, now Mr. Robinson (indicating).

Mr. Inman: Is that all right?

Mr. Hogan: That is better than he did before.

The Court: If there is any question about it, let the witness step down and touch him. Do you want the witness to do that?

895 Mr. Hogan: No. That is all right.

Mr. Inman: That is all.

The Court: Is that the only name that you knew, or did you know by his first name?

A. That is the only name I knew about.

Mr. Hogan: No cross-examination.

RALPH CRIBARI was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Ralph Cribari.

Q. Where do you live?

A. 21 Birch Street, Mt. Vernon, New York.

Q. In what business are you engaged?

A. I am connected with the Rupert Brewery.

Q. In the summer of 1935 were you employed?

A. No.

Q. Where did you live in the summer of 1935?

A. In a cottage on Dearborn in Rye, New York.

Q. Is that Oakland Beach?

A. Yes, sir.

896 Q. Did you have any neighbor there?

A. I did.

Q. I will ask you whether or not there was a neighbor there known to you as Mr. Burgess?

A. There was, yes.

Testimony of Ralph Cribari

Q. Did you know his first name?

A. Leslie.

Q. How long did that Leslie Burgess live as a neighbor to you?

A. Well as far as I can remember, sometime in July he moved in and some time in August he moved out.

Q. How long were you there at the beach?

A. The whole summer, from June 15th until September 15th.

Q. Did you know that Leslie K. Burgess well or not?

A. Well just through my acquaintance with him there. I would say real well.

Q. Did you associate with him much or not?

A. Quite a bit.

Q. What association did you have?

A. Went swimming with him; and we went to the Polo Grounds to see a ball game. And we played tennis together. I went out at night on frequent occasions with him.

Q. Did that Leslie K. Burgess tell you what his
897 business was?

A. Yes, sir, he did.

Q. What did he say?

A. He said he was with the Johns Manville Company, of Chicago and that he had taken a six months leave of absence.

Q. Have you seen that person since?

A. Only in the newspapers.

Q. Is he in the court room today?

A. Yes, sir.

Q. Will you point him out?

A. The gentleman sitting next to Mr. Hogan.

Mr. Inman: Let the record show that Thomas Henry Robinson Jr. is sitting next to Mr. Hogan.

A. (Continuing) I would not know him under that name.

Q. Did you have occasion to talk to him?

A. Yes; quite often.

Q. Did you discuss the topics of the day?

A. Yes.

Testimony of Ralph Cribari

Q. What was his general appearance and impression?

A. Well, personally, I thought he was a very nice fellow, and I was glad that I had made his acquaintance at the time.

Q. Did you discuss business conditions?

898 A. I don't recall that.

Q. What did you discuss, Mr. Cribari?

A. We talked about sports, and we talked about tennis. I remember that is how we got involved in playing tennis. Baseball. Oh nothing otherwise, I don't think.

Q. I will ask you did he have with him any woman known as his wife, Mrs. Burgess?

A. He did.

Q. Did you know her?

A. I did.

Q. I will show you this picture and ask you if you recognize that?

A. I do.

Q. Who is that?

A. So far as I know, Jean Burgess.

Q. Was she known to you as Jean?

A. Well, I would not remember the first name. I thought it was Jean.

Q. That is the woman known to you as the wife of Robinson?

A. As Mrs. Burgess.

The Court: Has that picture been introduced?

Mr. Inman: It hasn't been identified yet. I will ask the stenographer to mark this picture government

899 Exhibit No. 58, for identification.

The Court: Let the record show that the witness looked at the picture.

(The picture above identified was handed to the Reporter and marked Government Exhibit No. 58 for identification.)

Cross-examination by Mr. Hogan.

Q. Mr. Cribari, how often would you say you went to the Polo Grounds or the Yankee Stadium?

A. Just once, I think.

Testimony of Ralph Cribari

Q. I mean in company with the man you knew as Leslie Burgess?

A. That's right.

Q. That, of course, was during the baseball season?

A. The Giants were at home.

Q. Where are the Polo Grounds located in New York for the purpose of the record here?

A. It is in the Bronx around 149th Street, I believe. I may be wrong about that.

Q. How far from the scene of this beach cottage residence did you and the man you knew as Burgess go to the polo grounds at New York?

A. About 25 miles—20 or 25 miles.

900 Q. What method of transportation did you and Burgess use to get from the beach to the polo grounds?

A. We had Mr. Burgess' Plymouth.

Q. Where else did I understand you to say you and he went?

A. We played tennis at the Rye High School grounds on one or two occasion. One night we went to the village of Tuckahoe to a night club.

Q. Did you go to any other night club with him?

A. We were out a few times, to beer gardens around the town there.

Q. How far is Rye from New York proper?

A. What do you call "New York proper"? The Bronx?

Q. You know more about it than I do.

A. From Rye to New York it is 20 or 25 miles—that is to the Bronx line. When they figure the distance they usually figure to Columbus Circle, about 30 miles.

Q. Well, Rye is not far from the main residence area, is it?

A. No.

Q. Did you and Burgess go in down town Manhattan to any of those places?

A. Never.

Q. These beer gardens, were they frequented by
901 members of the public in large numbers?

A. They were open to the public. I would not say

Testimony of Ralph Cribari

anywhere they were very crowded.

Q. And in going with the man you knew as Burgess to and from with him, you necessarily passed by several officers of the law, didn't you—traffic officers and others?

A. No. When we went to Tuckahoe or the polo grounds just around the grounds you very seldom saw one. They may have one or two in the town. None were stationed around where we were.

Q. You mean they did not have any police stationed around in New York City?

A. I said at Tuckahoe and the polo grounds.

Q. There were several policemen stationed around the polo grounds?

A. I wouldn't be surprised.

Q. They usually are?

A. Not to my knowledge.

Q. Haven't you seen police officers at the ball games?

A. Yes. You said stationed there.

Q. Yes?

A. They were fans just like I was.

Q. I mean in uniform?

A. Yes, I have seen plenty in uniforms as fans.

902 Q. Was Burgess dressed in ordinary street clothes?

A. At the time we went to the polo grounds?

Q. Yes.

A. I couldn't say.

Q. Do you know what he had on?

A. He might have had on a sport jacket. He often wore one.

Q. Did he have a moustache?

A. No.

Q. Did he use any method to conceal his identity?

A. He did not.

Redirect Examination.

Q. Did you know he was Thomas Henry Robinson, Jr.?

A. No, sir, I did not.

Q. That was concealed from you, was it not?

A. Yes, sir.

Testimony of Ralph Cribari

Recross-examination by Mr. Hogan.

Q. Were you acquainted with any FBI Agents?

A. No, sir.

Q. I will ask you to reflect and think back and try to remember if you weren't at that time?

A. You mean did I know any at that time?

903 Q. Yes?

A. No, sir.

Q. Had you read anything at all about the Stoll kidnapping case?

A. Well I remembered it very casually; yes.

The Court: Members of the Jury, we will recess for lunch. During this intermission do not discuss this matter among yourselves or with anyone or permit anyone to talk about it in your presence. We will convene at 2 o'clock.

Convened pursuant to adjournment and continued with the trial as follows:

LOUIS O. DOTY was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Louis O. Doty.

Q. Where do you live?

A. 4344 193d Street, Flushing, Long Island, New York.

Q. Where are you employed?

A. Hotel New Yorker.

904 Q. In what capacity?

A. Credit Manager.

Q. How long have you been so employed?

A. Since August 1931.

Q. You were then Credit Manager of that hotel in 1935?

A. That is correct, sir.

Q. And 1934?

A. That is correct, sir.

Testimony of Louis O. Doty

Q. Are the original guest registration cards for that hotel for the years 1934 and 1935 in existence today?

A. They are not.

Q. What happened to them?

Mr. Hogan: Before this witness testifies further, I want to object to his testimony because his address is shown to be different from that furnished on the list.

The Court: What is the address shown?

Mr. Hogan: 4384 84th Street, Flushing, Long Island, Queens County, New York, and he says 193d Street.

Mr. Inman: Do you live on 193d Street?

Witness: Yes, 4344 193d Street.

The Court: What does the list show?

Mr. Inman: It apparently shows 84th Street.

905 The Court: All right. The witness may be excused.

JOHN G. CONTAT was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. Tell the jury your name?

A. John G. Contat.

Q. Where do you live?

A. At the Ritz Carlton Hotel.

Q. New York, New York?

A. Yes.

Q. Are you employed by that hotel?

A. Yes, sir.

Q. In what capacity?

A. Manager.

Q. As Manager of that hotel, do you have under your control and in your custody the records of that hotel?

A. I have.

Q. Is it a part of the customary and usual business of that hotel to have guest registration cards executed?

A. Yes, sir.

Q. Are those registration cards executed in the usual

Testimony of John G. Contat

course of business?

906 A. Yes, sir.

Q. At the time the guest registers?

A. That is right.

Q. I will show you that record and ask you to tell the jury what it is?

A. It is one of our registration cards for 1935.

Q. Of what hotel?

A. The Ritz Carlton Hotel in New York.

Q. What is the date of it?

A. January 8, 1935.

Q. And what does that record disclose?

A. The name of the registrant, Morton Wallace.

Q. How do you spell the first name?

A. M-o-r-t-o-n.

Q. And what address did that guest card give?

A. 320 North Ridgeland Avenue, Oak Park, Illinois.

Q. To what room was he assigned?

A. 302 at the rate of \$6.00 a day.

Q. Does the card show by what firm or corporation that guest was employed?

A. Yes. "Remarks: Chicago Board of Trade."

Q. What does that mean?

A. It means that the gentleman in question was connected with the Chicago Board of Trade.

Q. From his own statement?

907 A. Yes, sir, it is in his handwriting.

Q. Was that card made as a part of the usual business of the Ritz Carlton Hotel?

A. That is right.

Q. Made by the guest at the time he registered?

A. That's right.

Q. Is it kept as a part of the regular records of that hotel?

A. It is.

Q. I will ask you to file that card with your testimony as government Exhibit No. 59?

A. All right.

Q. Did you see that guest yourself?

A. No, sir.

Testimony of John G. Contat

(The registration card above described was handed to the Reporter, marked Government Exhibit No. 59, and filed).

Cross-examination by Mr. Hogan.

Q. You don't know who registered under that name, do you, Mr. Contat?

A. No, sir.

Mr. Hogan: That's all.

908 MRS. LOUISE VAN HOUTEN was called by the government as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Mrs. Louise Van Houten.

Q. Where do you live?

A. 237-06 93d Avenue, Queens Village.

Q. Is that in Queens County, New York?

A. Right.

Q. How long have you resided at that address?

A. It will be 18 years this January.

Mr. Hogan: I object to this witness testifying because the name is given in the list is Mrs. Elijah S. Van Houten.

Witness: That is my marriage name, Elijah S.

The Court: You mean the name you last gave is your marriage name?

A. My married name is Mrs. Elijah S. Van Houten Jr.

The Court: All right.

Q. Is the place you live close to the premises known as 237-04 93d Avenue?

A. Yes; right next door.

909 Q. In 1935 I will ask you whether or not there were people living at 237-04 93d Avenue known to you as Mr. and Mrs. Burdin?

A. Yes, sir.

Q. What part of 1935 did Mr. and Mrs. Burdin live there?

Testimony of Mrs. Louise Van Houten

A. It was in the fall.

Q. How long did they live there.

A. Approximately a month and a half, or two.

Q. Can you tell the jury just when they moved out?

A. The Monday before Thanksgiving.

Q. Did you see Mr. and Mrs. Burdin there?

A. Yes, sir; I did.

Q. Did you have occasion to have any conversation with them?

A. Mrs. Burdin used to come into my home very frequently and talk with me a lot, and she told me about her folks back in California.

Mr. Hogan: That conversation is objected to.

The Court: Objection sustained.

Mr. Inman: That is, just the conversation with Mrs. Burdin?

The Court: Yes.

Q. Did you see Mr. Burdin?

910 A. Yes, sir.

Q. Have you seen that person since?

A. No; I have not.

Q. Is he in the court room now?

A. No, I don't see him in here.

Q. All right. Now did anyone else come there with the Burdins or frequent that place?

A. It was only Mr. and Mrs. Burdin that I knew.

Q. Did anyone else visit them? Did you know any other visitors there?

A. No.

Q. I show you government exhibit No. 58 and ask you if you recognize that picture?

A. It is Mrs. Burdin. That is the woman that lived next to me.

Q. And since then have you seen any of the other persons who were there?

A. No.

The Court: What was the name of that street?

Witness: 237-06 93d Avenue.

The Court: All right.

Mr. Hogan: No questions.

Testimony of Emil Berg

911 EMIL BERG was called as a witness by the government and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Erich Emil Berg—they have it as “Emil Berg” but my full name is Erich Emil Berg.

Q. Where do you live?

A. 9 Pilling Street, New York.

Q. Where are you employed?

A. Forest Hills Fireproof Storage Company.

Q. How long have you been employed by the Forest Hills Fireproof Storage Company?

A. Going on 18 years.

Q. In what capacity are you employed there?

A. Accountant.

Q. Do you have the custody of the records of that company?

A. That's right.

Q. What is that record I show you?

A. It is really a storage contract.

Q. Is that a part of the records of your company?

A. It is the original record we use on storage **912** coming into the place.

Q. Is that record made in the usual course of business?

A. Yes, sir; it is the contract between the customer and the company.

Q. And was that record executed in the usual course of business by your company?

A. That is right.

Q. At the time of the occurrence recorded thereon?

A. That is right.

Q. By whom was it executed?

A. Myself and the party who delivered it there.

Q. What is the date of that?

A. April 12, 1935.

Q. And tell the jury what that is?

A. Well, that date we received a filing cabinet for storage.

Testimony of Emil Berg

Q. Under what name did you receive that filing cabinet?

A. J. H. Baker.

Q. Did you personally handle that transaction?

A. The entire transaction.

Q. Have you seen that J. H. Baker since?

A. Yes.

Q. Is he in the court room?

913 A. Yes, sir.

Q. Point him out, please?

A. That is Robinson.

The Court: Well, for the purpose of the record, designate him some way?

Witness: Between those two gentlemen.

The Court: Sitting next to counsel, you mean?

Witness: Yes, sir.

Q. When you first saw Robinson you then knew as J. H. Baker, where was he?

A. He came into the front entrance of our place and he inquired whether we would store a filing cabinet, and I asked to look at it and he pulled his car down to the side of the building, that was before it was concreted there, and so I helped him with the filing cabinet out of his car and took it in the side entrance; and then I had him sign this contract; and I asked him if he wanted to store it in one name or two names; and then he requested to please allow Mrs. J. H. Baker or Mrs. Elizabeth Baker to move it or have access to the cabinet.

Q. What other words did he add to the request that someone else have it?

A. Only upon written order from him, and then I added on that "Upon written order from me".

Q. Mrs. J. H. Baker and Mrs. Elizabeth Baker
914 could get it only on order from him?

A. Yes.

Q. Did he sign that contract?

A. Yes, in two places.

Q. In your presence?

A. Yes, sir.

Q. What name is signed?

Testimony of Emil Berg

A. "J. H. Baker".

Q. In both places?

A. Yes, here and here (indicating).

Q. What was the storage on that filing cabinet?

A. 50c a month.

Q. Was that paid?

A. Yes; he paid 12 months in advance and he gave me \$6.00.

Q. Did he return to that filing cabinet at any time?

A. Yes, I remember him coming back at a later date. Much later. It was probably about a year because I remember looking into our accounts receivable to see if he owed us any money on it.

Q. To see if he had paid?

A. Yes, we didn't want him to get anything out without getting our money.

915 Q. What did you find?

A. It had been just a year and he had paid in advance, and so I didn't ask him for any money.

Q. You didn't?

A. No.

Q. At that time did he go into that filing cabinet?

A. Yes.

Q. Did you go with him?

A. Yes, sir, I took him to the mezzanine floor, that is between the first and second floors.

Q. And what happened?

A. He opened the filing cabinet and took out a package about that long and about that wide (Indicating) wrapped in brown paper.

Q. Did he take it with him?

A. Yes, and went away and I haven't seen him since.

Q. Until this trial?

A. Yes.

Q. Will you file this contract you said he signed with your testimony and make it a part of the record?

A. I will.

(The contract described was handed to the Reporter, marked government Exhibit No. 60, and filed.)

Mr. Hogan: No cross-examination.

Testimony of Mrs. Anna S. Webb

916 MRS. ANNA S. WEBB was called by the government as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Anna S. Webb.

Q. Where do you live?

A. Los Angeles, California.

Q. What address?

A. 6427 West 5th Street.

Q. In what business are you engaged?

A. Real Estate Broker.

Q. How long have you been a Real Estate Broker?

A. I have been in the real estate business all my life, but I have been a broker since about 1931.

Q. In the years 1934 and 1935 were you engaged in that business in Los Angeles?

A. Yes I was.

Q. Did you have occasion to meet Mr. and Mrs. Burgess?

A. Yes I did.

Q. Under what conditions did you meet Mr. and Mrs. Burgess?

917 A. Well I ran an ad like this: "Let Ann Webb place you: Fine homes for fine people", and he read that ad and called me up.

Q. As a result of that telephone call ~~where~~ where did you go?

A. To the Biltmore Hotel.

Q. Did you meet Mr. Burgess there?

A. Yes, sir.

Q. Do you recall his name?

A. Leslie K. Burgess.

Q. How did you know that was his name?

A. He told me so.

Q. Have you seen him since?

A. Yes.

Q. Is he in the court room?

A. Yes.

Q. Where is he?

Testimony of Mrs. Anna S. Webb

A. Right there.

Q. Where?

A. Between those two gentlemen.

Mr. Inman: Let the record show it is Robinson.

Mr. Hogan: I object to that.

The Court: Well I think the record has to show it.

918 Mr. Hogan: All right.

Q. What conversation did you have with him at the Biltmore?

A. I told him that these houses belonged to friends of mine and they were old time acquaintances, and I said I would have to have references; and so I went down there and he kidded me into the idea that I did have references.

Q. That you had references?

A. Yes, but I found out I didn't.

Q. Where did he tell you he was from?

A. Highland Park, a suburb of Chicago; and that he was an attorney and that he was out here in the interest of his father in the Spreckles Estate.

Q. What is the Spreckles Estate?

A. It is a huge corporation—sugar mostly.

Q. Was it a well known estate in California?

A. Yes it is. And I said to him, "The big interests are in San Francisco and San Diego and if you want to be in the big interests you ought to go there." And he said, "Oh no, my father isn't an heir, he has a business interest and I want to handle this quietly." So I carried him around for about a week and even the niece of the owner of this house in Santa Monica, she was sold on his references too—

919 Mr. Hogan: I object to that.

The Court: Objection sustained.

Q. We want to know just what you did. Did you see him often while you were dealing with him?

A. Every day, until I got him placed.

Q. Did you rent him a place?

A. Yes, 346 16th Street, in Santa Monica.

Q. At what rental?

A. \$150.00.

Q. I will show you this card and ask you if that is one

Testimony of Mrs. Anna S. Webb

of your business cards?

A. Yes.

Q. With reference to the reverse side I will ask you if that is a receipt for \$150.00 you gave to the man you knew as Burgess?

A. Yes; I wrote that.

Q. Dated January 21, 1935, isn't it?

A. Yes.

Q. "Received \$150.00 of Mr. Leslie Burgess for one month's rent of 346 16th Street, Santa Monica, pays to February 23, 1935". Is that right?

A. Yes.

Q. And you signed it and gave this to Burgess?

A. Yes.

920 Q. I will ask you to introduce that card with your testimony as government Exhibit No. 61?

A. I will.

(The above described card was handed to the Reporter, marked Government's Exhibit No. 61, and filed.)

Q. Now at the time you were dealing with the man you knew as Burgess, did he tell you what type home he was looking for?

A. Yes, they wanted a secluded home, preferably walled in, and they didn't want close neighbors.

Q. Did you discuss that with both Burgess and his wife?

A. Yes, and Mrs. Burgess said—

Mr. Hogan (Interrupting): Objection.

By the Court: Objection sustained.

Q. Were the statements you were about to relate made in the presence of this defendant?

A. Yes.

Q. And in connection with the house they were about to rent?

A. Yes.

Q. Then I will ask you to relate those statements?

Mr. Hogan: Same objection.

921 The Court: Sustained only as what Mrs. Burgess

Testimony of Mrs. Anna S. Webb

said.

Mr. Inman: Yes.

Q. I will show you government Exhibit No. 58 and ask you if you recognize that picture?

A. Yes.

Q. Who is that?

A. The lady who represented herself to be Mrs. Burgess.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. You say that he kidded you into believing you had references?

A. Yes, he was so brilliant. He had the answers to every question before you could ask it. He talked so intelligently, and he sold me the idea. I don't often fall so easily, but he got me.

Q. You mean he dazzled you?

A. He was plenty smart. I think I have about average intelligence myself, but he was head and ears over me.

Q. He sold you on the idea that he was a big business man?

A. Yes, sir, that he was somebody, and I certainly **922** believed it and so did the owner.

Q. You thought he really had some connection with the Spreckles Estate, didn't you?

A. I certainly did or I would not have been hauling him around all of that time.

Q. He was a pretty nice looking fellow?

A. Yes, sir; and very courteous and considerate, and he was 100% as far as I was concerned. I was horrified when this came up—perfectly horrified.

Q. He had a way that went over with the ladies, didn't he?

A. He was plenty smart. I have seen lots of crazy people, and I have had lots to do with them, that is one of my forms of welfare work—

Mr. Inman: Objection.

The Court: Objection sustained. The jury will not consider that last statement.

Testimony of Mrs. Anna S. Webb

Q. Was he well dressed?

A. Yes, sir.

Q. Well mannered?

A. Yes, indeed. He was suave, and his manners were perfect. He was A-1.

Q. Are you married?

A. Yes.

Q. Were you married then?

923 A. Yes, sir.

Q. Well, didn't you fall a little bit for him?

A. No, except for his ability, because I have been out there for 37 years—I told him at that time I had been there 28 years—and I told him I had good references. He said that is what he wanted. He wanted an old-timer to place him. I was more interested in my clients than in one tenant because that is where my money was, in my clients or, rather, the owners of these houses.

Q. And he swept you completely off of your feet?

A. Indeed, and I tell you he was as smart as they make them. You couldn't beat him for a second.

Mr. Hogan: That is all.

924 HARRY STREET JENKINSON called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Harry Street Jenkinson.

Q. Where do you live?

A. 259 N. Swall Drive, Beverly Hills, California.

Q. Where are you employed?

A. At the Ambassador Hotel.

Q. Where is it located?

A. 3400 Wilshire Boulevard, Los Angeles, California.

Q. In what capacity are you employed at that hotel?

A. As an Assistant Manager.

Q. As Assistant Manager, do you have custody of the

Testimony of Harry Street Jenkinson

guest registration cards?

A. I do, sir.

Q. Is it a part of the business of the Ambassador Hotel to require the execution of guest registration cards?

A. Yes, sir.

Q. I'll show you this card and ask you if that is a part of the records of your hotel.

A. It is, yes.

925 Q. Was that card made in the usual course of business at your hotel?

A. Yes, sir.

Q. At the time of the registration of the guest?

A. At the times of the registration, yes.

Q. And kept as a part of the regular records of your hotel?

A. That is correct, sir.

Q. What does that record disclose?

A. Beg your pardon?

Q. What does that record show?

A. It shows that Neill Morton and wife, 16012 Hillside Avenue, Hollis, Long Island, New York. I am incorrect, that's Neill Martin instead of Morton.

Q. How do you spell it.

A. M-a-r-t-i-n—registered at our hotel January 17th, 1935, at 8:04 a.m.

Q. Does that record show how long they remained at that hotel?

A. This particular record does not, sir.

Q. Do you have with you a record that does disclose that?

A. I have, yes.

Q. I will ask you to file that guest registration card with your testimony as Government Exhibit No. 62.

926 A. I do.

(The guest registration card referred to was handed to the reporter and filed as Government Exhibit No. 62.)

Q. What other records do you have in connection with Neill Martin and his wife?

Testimony of Harry Street Jenkinson

A. I have a copy of his statement, ledger card, showing his stay as of January 17th, 1935, which indicates that he made a stay with us of one day only, checking out on January 18th, 1935.

Q. Did you register that guest?

A. I did not, sir.

Q. Did you see him at all?

A. No, sir.

Q. That you know of?

A. Not to my knowledge.

Mr. Inman: You may ask the witness.

Mr. Hogan: No questions.

CLARENCE CHRISTIAN SMITH called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Q. Tell the jury your name.

A. Clarence Christian Smith.

Q. Where do you live?

A. 4307 Seventh Avenue, Los Angeles, California.

927 Q. Where are you employed?

A. Biltmore Hotel, 515 S. Olive Street, Los Angeles, California.

Q. In what capacity are you employed at the Biltmore Hotel?

A. Credit Manager.

Q. How long have you been Credit Manager?

A. Since October, 1938.

Q. As Credit Manager, do you have in your custody and under your control the records of the guest registrations of the hotel?

A. Yes, sir.

Q. I'll show you this paper and ask you if that is part of the records of the Los Angeles, Biltmore Hotel.

A. Yes, sir.

Q. It is part of the record?

Testimony of Clarence Christian Smith

A. Yes, sir.

Q. Was that record made in the usual course of business of your hotel?

A. Yes, sir.

Q. Was it kept in the usual course of business of your hotel?

A. Yes, sir.

Q. Made at the time of the registration of the guest?

A. Yes, sir.

938 Q. Will you examine the last entry on that page?

A. Yes, sir.

Q. And tell the jury what it is?

A. It is the registration of Leslie Burgess and wife.

Q. Talk loud, so the jury can understand you.

A. It is the registration showing the name of Leslie Burgess and wife.

Q. What address?

A. Highland Park, Illinois.

Q. On what day?

A. January 18th, 1935.

Q. What room was assigned to them?

A. Occupying Room 8232.

Q. I will ask you to file that record with your testimony as Government Exhibit No. 63.

A. I do.

(The document referred to was handed to the reporter and filed as Government Exhibit No. 63.)

The Court: Was it part of the regular business of your hotel to keep such a record?

The Witness: Yes, sir.

Q. Did you register that guest known to you as Leslie Burgess?

A. No, sir.

929 Q. Do you know how long that guest remained in your hotel?

A. No, sir.

Mr. Inman: You may ask the witness.

Mr. Hogan: No questions.

Testimony of Roy McMains

ROY McMAINS called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. R. L. McMains.

Q. Where do you live?

A. 714 Ocean View, Monrovia, California.

Q. Where are you employed?

A. At the Hotel Constance in Pasadena.

Q. How long have you been employed at that hotel in Pasadena?

A. Approximately three years.

Q. In what capacity?

A. As auditor.

Q. As auditor, do you have in your custody and under your control the records of guest registration of the Constance Hotel?

A. Yes, sir.

930 Q. Is it part of the usual business of the hotel to have made guest registration cards.

A. The guest registers at the time he comes in, yes, sir.

Q. At the time he comes in. I'll show you these cards and ask you if they are part of the records of your hotel.

A. They are, sir.

Q. I'll show you this card being No. 8710, and ask you to tell the jury what that is.

A. That's the—

Q. Talk loud so the jury can hear you, please.

A. That's the registration card of Mr. and Mrs. L. K. Burgess.

Q. On what day?

A. On June 1st, 1935.

Q. And what address was given?

A. Long Beach, New York, it says.

Q. And what street?

A. 2042 Long Beach Road.

Testimony of Roy McMains

Q. Long Beach, New York?

A. That's what it says; yes, sir.

Q. Do you have with you the arrival and departure record of guests?

A. Yes, sir.

Q. At that hotel?

931 A. Yes, sir.

Q. Is that record kept in the usual course of your business?

A. The arrival is recorded sometime during the day.

Q. I don't believe the jury can hear you.

A. I say, the arrival record is made on that particular day, sometime during the course of the day, and the same as to departure.

Q. Do you have that record with you?

A. Yes, sir.

Q. Will you examine that record for No. 8710 and tell the jury how long after June 1st, 1935, Mr. and Mrs. L. K. Burgess remained in the Constance Hotel?

Mr. Hogan: I don't believe that the witness has identified that book as a record kept in the usual course of business.

Mr. Inman: Yes, I think he did, but I will ask him again.

Q. Was that book kept in the usual course of business?

A. Yes, sir.

The Court: Is it the usual course of business of your hotel to keep such a book?

The Witness: I think most hotels do.

The Court: I mean your hotel.

The Witness: It is, our hotel, yes, sir.

932 Q. All right, tell the jury what the record discloses.

A. Mr. and Mrs. Burgess came in June 1st and left June 4th, 1935.

Q. I will ask you to file the card bearing No. 8710 with your testimony as Government Exhibit No. 64.

A. I do.

(The card referred to was handed to the reporter and filed as Government Exhibit No. 64.)

Testimony of Roy McMains

The Court: Are such entries on that book and on those cards made at the time they occur?

The Witness: Sometime during the day; yes, sir.

The Court: Shortly thereafter.

The Witness: Yes, sir.

Q. I'll show you the card bearing No. 10402 and ask you to tell the jury what that is.

A. This is the registration record of Mr. and Mrs. L. K. Burgess.

Q. In what hotel?

A. The Constance Hotel, Pasadena, California.

Q. On what date?

A. December 11th, 1935.

Q. What address did they give at that time?

A. 13224 Maple Avenue, Flushing, New York, it looks like.

933 Q. Does the arrival and departure record about which you have testified disclose how long after December 11th, 1935, Mr. and Mrs. Burgess remained in your hotel?

A. Yes. They arrived on December 11th and left on December 16th, 1935.

Q. I will ask you to file the card bearing No. 10402 with your testimony as Government Exhibit No. 65.

A. I do.

(The card referred to was handed to the reporter and filed as Government Exhibit No. 65.)

Q. Did you register those guests?

A. No, sir.

Q. Did you have any personal contact with them?

A. No, sir.

Mr. Inman: You may ask the witness.

Mr. Hogan: No questions.

Mr. Inman: That will be all.

HARRY KAUFMAN called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Testimony of Harry Kaufman

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Harry Kaufman.

Q. Where do you live?

934 A. Los Angeles, California.

Q. What address?

A. 216 N. Arden Boulevard.

Q. Where are you employed?

A. The Automobile Club of Southern California.

Q. In what capacity?

A. Manager of the Membership Department.

Q. Do you have branches of your Automobile Club?

A. Yes, sir.

Q. As manager of the Automobile Club do you have in your custody and under your control the record of memberships and applications from all branches?

A. Yes, all records from all offices are retained in the main office in Los Angeles.

Q. I will show you this card and ask you if that is a record of your Southern California Automobile Club?

A. That's right, sir.

Q. Was this record made in the usual course of business of the Automobile Club of Southern California?

A. Yes, sir.

Q. Was it part of your regular course of business to keep such a record?

A. Yes, this is a permanent record.

Q. What is that record?

A. That is the original application that is signed by the applicant or the member, with the address given.

Q. What is the name of the applicant signed to 935 that card?

A. This is Leslie K. Burgess.

Q. At what address?

A. That carries a mailing address of 346 Sixteenth Street, Santa Monica.

Q. Is the occupation of the applicant shown there?

A. Yes, sir.

Q. What is it?

Testimony of Harry Kaufman

A. Real estate, investments.

Q. What is the date of that application?

A. It is dated February 13th, 1935.

Q. Was a membership card issued as a result of that application?

A. Yes, sir.

Q. To whom?

A. The membership card was issued to Leslie K. Burgess, 346 Sixteenth Street, Santa Monica, California, on the 15th day of February, 1935.

Q. For what period of time?

A. Pardon me.

Q. Was that a year membership?

A. No. This is what we call a six months, half year, membership, which is indicated by the amount.

Q. I'll show you that card and ask you what that is.

A. That's the regular original membership card
936 that's issued upon receipt of this application.

Q. Was the card issued as a result of that application?

A. Yes, sir.

Q. Was any card issued on that application?

A. Yes. There was a duplicate, what we call a supplementary duplicate courtesy card, to Mrs. Jean Burgess. That's issued automatically upon this application—requested. It must be requested to be issued.

Q. Why did you issue two cards, one to Leslie K. Burgess and one to Mrs. Jean Burgess?

A. Well, usually for the extension of courtesy.

Mr. Hogan: Not what is usually—

The Court: What did you do in this case?

The Witness: We issued the card to Mrs. Jean Burgess.

Q. Why did you issue one to her?

A. For service, for club service.

Q. Is it necessary that any relationship exist between the two?

A. Oh, definitely.

Q. What is that relationship?

A. In this case it is indicated by the fact it is printed,

Testimony of Harry Kaufman

that would be the wife.

Q. I will ask you to file this application with
937 your testimony as Government Exhibit No. 66 and the membership card with your testimony as Government Exhibit No. 67.

A. I do.

(The application and the card were handed the reporter and are filed as Government Exhibits Nos. 66 and 67, respectively.)

Q. Did you personally see the man who applied as Leslie K. Burgess?

A. No, sir.

Mr. Inman: That's all.

Mr. Hogan: No questions.

LEO SHACTMAYER called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Leo Shactmayer.

Q. Keep your voice up, Mr. Shactmayer. Tell the jury where you live.

A. At Santa Monica, 14956 Camarosa Drive, Pacific Palisades.

Q. Los Angeles County, California?

A. Yes, sir.

Q. In what business are you engaged?

938 A. Automobile business.

Q. What is the name of your company?

A. At this time?

Q. Yes.

A. Simonson & Shactmayer, Incorporated.

Mr. Hogan: Will you spell the name of the street which you give as your address?

The Witness: 14956 Camarosa Drive.

Testimony of Leo Shactmayer

Mr. Hogan: Spell that.

The Witness: C-a-m-a-r-o-s-a.

Mr. Hogan: Your Honor, the street is shown P-a-m-a-r-o-s-a. I object to his testimony.

Mr. Inman: I think that is so slight, Your Honor.

The Court: No. I think the statute is quite strict on that.

Mr. Inman: There is a difference of one letter.

The Court: The first letter?

Mr. Inman: Yes, sir.

The Court: The witness will be excused.

Mr. Inman: If Your Honor please, the next witness, it will be necessary to bring quite a few exhibits into the court room.

The Court: All right. Members of the jury, we
939 will take a short recess at this time. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence.

Mr. Marshal, give us a ten minute recess.

A short recess was taken, after which the hearing was resumed, as follows:

EARL J. CONNELLEY called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Earl J. Connelley.

Q. What position do you occupy with the Government, Mr. Connelley?

A. Assistant Director, Federal Bureau of Investigation, United States Department of Justice.

Q. Where do you live?

A. 506 E. Fourth Street, Cincinnati, Ohio.

Q. During the year 1934, were you an employee of the Department of Justice, Federal Bureau of Investigation?

A. Yes.

Testimony of Earl J. Connelley

Q. During the month of October, 1934, did you have occasion to be in Louisville, Kentucky and vicinity?

A. Yes.

940 Q. What was your capacity here at that time, Mr. Connelley?

A. I was in charge of the investigative effort in connection with the kidnapping matter that was under inquiry at that time.

Q. On or about October 16th, 1934, immediately after the return of Mrs. Stoll to her home, did you receive any money at that time?

A. I examined certain money at that time.

Q. Where did you procure that money from?

A. Mr. Berry V. Stoll.

Q. Was that money at that time identified by initialing it in any way?

A. It was. It was initialed by myself, Mrs. Stoll and Mr. Speed.

Q. Did you examine the serial numbers on that money?

A. I did.

Q. Did you compare the numbers that you found with any other numbers?

A. I compared that with a list of bills which were in our possession at that time.

Q. I'll hand you Government Exhibit 36 and ask you to examine that and tell the jury whether the \$470.00 which you have heretofore testified about, whether the serial numbers of those bills were compared with that list.

A. The serial numbers were compared with a
941 photostatic copy of this list which I had previously verified with the original sheet which is Page No. 1, initialed by A.E.G., listing one hundred numbers of \$5.00 bills.

Q. Now, I will ask you if the money that was turned over to you by Mr. Berry Stoll and initialed by Mrs. Alice Stoll, Mr. Berry Stoll and yourself, the serial numbers of those bills appear as a part of the ransom money.

A. Ninety-four bills were examined and ninety-four bills appear on the first page indicated as Page No. 1, initials A.E.G.

Testimony of Earl J. Connelley

Q. Now, Mr. Connelley, when did it become known to you the whereabouts of the apartment in Indianapolis that Mrs. Stoll was held captive?

A. On the evening of October 16th, 1934.

Q. Was that before or after the release of Mrs. Stoll?

A. That was after her release.

Q. With reference to the presence at the home of Mr. Berry V. Stoll of any persons at the time of Mrs. Stoll's return, I will ask you what persons were present at the time Mrs. Stoll returned to her home on Lime Kiln Road.

A. Mr. Berry V. Stoll, myself, and Mrs. Stoll returned there in the presence of two other agents of the Federal Bureau of Investigation.

Q. Was the property of Mr. Stoll on Lime Kiln
942 Road ordered cleared by you or not?

A. It was.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. What are the names of those other two agents stationed at the Stoll residence?

A. M. H. Purvis and H. E. Hollis came there with Mrs. Stoll in a car.

Q. Now, how many agents assigned to the Louisville office were engaged in investigating this matter prior to her return?

A. I have no independent recollection of that. There were a number of agents, probably fifteen or twenty.

Q. Were you in charge of those agents, Mr. Connelley?

A. Yes, sir.

Q. Didn't the information clear through you as it came in?

A. That's right.

Q. You knew that before Mrs. Stoll returned that she had been in Indianapolis, did you not?

A. I did not.

Q. Do you mean to say that you did not know that she had been there until Mr. Purvis and Mr. Hollis drove
943 in with her?

A. Sometime on that day of October 16th, after

Testimony of Earl J. Connelley

she had been released and the agents communicated with me from some point near Scottsburg, Indiana, is the first actual knowledge I knew Mrs. Stoll was anywhere, or anybody else in the Bureau.

Q. Didn't they know as early as Sunday, October 15th, where she was?

A. Nobody knew at that time.

Q. You are speaking of the Department of Justice, are you?

A. Federal Bureau of Investigation, Department of Justice.

Q. I will ask you if it isn't true that the Department did know it, and that you knew it, and that the newspapers here had the type set up, ready to print, that the man had been caught?

A. I had no such knowledge, and from my general information from everybody else in the Bureau from whom the information was clearing, nobody knew that at that time.

Q. You had contact with your Nashville office, did you not?

A. That is right.

Q. You knew that calls had been placed from Indianapolis to Nashville?

944 A. We knew that calls had been placed from some individual in Indianapolis, a man, from the best information that we could get from the conversation of the party receiving the conversation.

Q. Isn't it true that the F.B.I. agents at Nashville listened to those conversations that came from Indianapolis to the home of Mr. Thomas H. Robinson, Sr. and to the home of Mrs. Francis Robinson?

A. Not of my own knowledge. I don't know whether they listened to the calls or not. There were some calls possibly that they did. That would be the same information, some man called on the telephone.

Q. So with that information coming from Indianapolis and with the agents listening in to the conversation, they knew that Thomas Robinson was speaking from Indianapolis, did they not?

Testimony of Earl J. Connelley

A. They would have—they could make the deduction that Thomas Robinson was there, if the man calling was Robinson.

Q. Didn't you know the location of this apartment prior to the time Mrs. Stoll returned?

A. We did not know the location of the apartment until after Mrs. Stoll and Mrs. Robinson had been contacted on the road at Scottsburg, Indiana, on the evening of October 16th, 1934.

945 Q. Your agent Reynolds had reached Indianapolis at 3:00 or 4:00 o'clock a.m. the morning of the 16th, and you knew that, did you not?

A. I did not.

Q. Were you in contact with the Indianapolis office?

A. I was in contact with the office, yes.

Q. And you say that you did not know that agent Reynolds or any other agent had gone from Nashville to Indianapolis on that occasion?

A. Some agents had left Louisville through Evansville on the train to Terra Haute, Indiana.

Q. Those were under your supervision, those Louisville agents, when they did that?

A. When they left here they were under my supervision. When they arrived there they were under the supervision of H. H. Reinecke, the Special Agent in charge of the Indianapolis office.

Q. But you sent them out of Louisville.

A. That's right.

Q. On a mission.

A. That's right.

Q. What was that mission?

A. Insofar as possible to see that nothing happened to Mrs. Robinson enroute with the money, the \$50,000.00.

Q. Did you know anything about her trip?

946 A. Nothing other than communication with the Nashville office that she presumably had left for some point in Tennessee and would reach possibly Evansville, Indiana, that night.

Q. Did your agents see her in Terre Haute?

A. They did.

Testimony of Earl J. Connelley

Q. Did they go with her to Indianapolis?

A. I would not know. I don't think they did because their mission was to take her as far as Terre Haute where she was turned over to the agents of the Indianapolis office.

Q. As a matter of fact, your agents lost her trail, did they not?

A. Well, that's a matter of conjecture.

Q. They didn't stay with her, did they?

A. Well, that was part of their instructions.

Q. Not to stay with her?

A. Not necessarily to do anything with her which would interfere with her contact with the man who was holding Mrs. Alice Stoll.

Q. The next time that any of your agents picked up the trail of Mrs. Frances Robinson was at Scottsburg, Indiana, wasn't it?

A. No. They learned that she had left apparently with a couple from Indianapolis en route South in an automobile.

947 Q. And it was at Scottsburg that they overtook an automobile containing Frances Robinson and Mrs. Stoll.

A. That's right.

Q. Did you ever go over to this Apartment No. 2 at 2735 North Meridian Street?

A. I have never seen the apartment any time in my life that I recall, and I was not there during the time of October, 1934. I was not in Indianapolis at that time.

Q. Where are you stationed now?

A. I work out of Washington.

Q. Are you assistant to Mr. J. Edgar Hoover?

A. That's right.

Mr. Hogan: I believe that's all.

Redirect Examination by Mr. Brown.

Q. Mr. Connelley, where is Mr. Hollis?

A. He is dead.

Q. Where is Mr. Purvis?

A. He is in North Africa.

Testimony of Earl J. Connelley

Q. Throughout this entire period, Mr. Connelley, with relation to the protection or non-protection of Mrs. Alice Stoll, what was your purpose in giving the instructions that you have testified about concerning the agents accompanying Mrs. Francis Robinson?

A. We were interested at that time only in maintaining the safe return of Mrs. Stoll.

Q. And every step that you took, was it or was it not designed for that purpose?

A. That is right.

Mr. Brown: That is all.

Recross-examination by Mr. Hogan.

Q. How soon after this did Mr. Purvis leave the service of the F.B.I.?

A. I don't recall exactly. I think a year or so thereafter, possibly two years.

Q. He was one of the ace investigators at that time, was he not?

A. If you want to put that appellation on it that we all are that, we are not. There is not much difference between us.

Q. He was played up in the newspapers as an ace, was he not?

A. Newspapers and the bureau are two different parties. The Bureau is not responsible for what the newspapers publish.

Q. Didn't Mr. Purvis get mad and quit following this case?

A. He did not.

Mr. Brown: I don't know that any internal matters of the Bureau are concerned in this case.

The Court: Has that anything to do with this case, Mr. Hogan?

Mr. Hogan: It might concern the inner workings of this case.

The Court: Mr. Purvis is not a witness. You are not attacking his credibility in any way, are you?

Mr. Hogan: No, sir, I am not, not attempting to. That's all.

Testimony of John P. Knowles

JOHN P. KNOWLES, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. John P. Knowles.

Q. By what concern are you employed, Mr. Knowles?

A. I am employed by the Federal Bureau of Investigation, United States Department of Justice.

Q. Where do you live?

A. 715 Varnum Street, Washington, D. C.

Mr. Brown: This is the point, Your Honor, where this matter will come up. I want to offer in evidence and have marked as Government exhibits, two finger-print cards that will be introduced by Richard E. Smith, former special agent of the Federal Bureau of Investigation.

Mr. Smith's train is delayed and he will not be here until sometime late tonight, and I make this offer and the subsequent testimony of Mr. Knowles upon which part of it will be based, that this exhibit is the known specimen of finger-prints, and, of course, with the understanding that unless I so do this Mr. Knowles' testimony will be stricken from the record.

The Court: We discussed that with Mr. Hogan in chambers, and it is understood, I believe by counsel for both sides, that this witness can testify with respect to these exhibits with the understanding that they will be properly introduced by Mr. Smith tomorrow.

Mr. Hogan: Before we do that, will the reporter read me the address given by the witness?

(The reporter read the following:)

"715 Varnum Street, Washington, D. C."

Mr. Hogan: I will ask that the witness not be allowed to testify.

The Court: What is the address?

Mr. Hogan: The address is 715 Varnum Street, Northwest, Washington, D. C.

The Court: That's where you live, Northwest?

The Witness: That's right.

Testimony of John P. Knowles

Mr. Hogan: He didn't so state on direct examination.

951 The Court: He is stating now.

Mr. Brown: Mark that as Government Exhibit No. 68, and mark this for identification Government Exhibit No. 69.

The Court: Are there two different sheets?

Mr. Brown: Yes—three different sheets altogether.

The Court: Three sheets numbered 68 and 69? You have got two numbered 68.

Mr. Brown: Yes, two sheets numbered 68.

The Court: We better mark one 68-a and the other 68-b, hadn't we?

Mr. Brown: All right.

(The sheets referred to were marked for identification, Governments Exhibits Nos. 68-a, 68-b and 69, respectively.)

Q. Where are you employed?

A. I am employed in the Single Finger-print Section of the Federal Bureau of Investigation.

Q. Of what school or colleges are you a graduate?

A. Well, I studied—I had normal training the State of Iowa, taught school two years, passed the state examination, of course; I attended George Washington University, studying liberal arts, majoring in mathematics, and I received the Bachelor of Commercial Science degree from Benjamin Franklin University in Washington, D. C.

952 Q. After your graduation from the various schools that you have mentioned, where were you employed?

A. I have been employed by the Federal Bureau of Investigation for a little over seventeen years. I also was employed by the War Department prior to my coming to the Federal Bureau of Investigation for a period of nine months.

Q. During your employment by the Department of Justice, have you specialized in any branch of work, Mr. Knowles?

A. Finger-prints, strictly.

Testimony of John P. Knowles

Q. What are your duties in connection with finger-prints?

A. Developing, classifying and searching latent finger-prints, conducting research work in the department of latent finger-prints, instructing police officers and special agents in the methods of developing latent finger-prints and how to lift them and photograph them, and we get out publications, prepare evidence for court testimony and instruct the special agents and police officers in taking ink finger-prints and palm impressions.

Q. Mr. Knowles, in connection with your duties in the finger-print classification section of the Federal Bureau of Investigation, did you have occasion to examine a number of documents submitted to you from the Louisville office of the Federal Bureau of Investigation?

953 A. I did.

Q. I'll hand you Government Exhibit 68-a and b, which I will refer to as the known specimen, and hand you Government Exhibit 69, and ask you if you have made a comparison of the prints contained on Government Exhibit 68-a and b and Government Exhibit 69.

A. I have.

The Court: Let the record show that the back side of Government Exhibit 69 has been covered with a piece of paper clipped to it.

Mr. Hogan: If Your Honor please, I want to state right here that I am going to object to the jury being permitted to examine 69, or whichever one of those exhibits has the paper on the back. I don't want to take any chances.

The Court: The court is not going to let any one of those exhibits go to the jury that has inscriptions on the back. The Kessler-case, I think, held they couldn't do that.

Mr. Hogan: Yes. They got into trouble in that case.

Mr. Brown: That's what I am going to avoid.

The Court: However, it can be pasted on there before it goes to the jury so that it cannot be removed.

Q. Did you answer that?

A. These three cards contain the finger impressions

Testimony of John P. Knowles

954 *of the same person, that is, all three are identical.

Q. That is the finger-prints of Thomas H. Robinson, Jr. as disclosed by Government Exhibit 68-a and b?

A. That's right.

Q. I'll hand you Government Exhibit 33, being the original ransom note, and ask you if you examined that ransom note to determine the presence or absence of finger-prints.

A. Yes. This was examined under my supervision by a chemist.

Q. Have you prepared any charts of that, Mr. Knowles?

A. As a result of our examination there were sixteen latent finger-prints developed on this specimen, that is, the envelope and the two pages of the letter.

Q. Have you prepared any charts as a result of that examination?

A. Yes. I identified thirteen impressions with finger-prints of Thomas H. Robinson. I have prepared charts of three of the latent impressions.

Q. Suppose you refer to your charts, if you have them here.

A. Shall I show them to the jury?

Q. Yes.

A. Your Honor, I will show these charts I have prepared to the jury. These are copies, photographic
955 copies of the original.

(At this point the witness banded photographs to the court and counsel for defendant.)

Mr. Hogan: If Your Honor please, let's not have them shown to the jury as yet.

The Court: How is he going to explain them if he doesn't show them to the jury?

Mr. Hogan: I submit they haven't been properly identified.

The Court: He asked him if he made some charts, didn't he?

Mr. Brown: Of the latent finger-prints that he has identified as being on the ransom note.

Mr. Hogan: I am just making my objection on that basis.

Testimony of John P. Knowles

The Court: If you will explain what you mean by it—don't understand.

Mr. Hogan: I don't think the prints and the other evidence have been connected up sufficiently to identify the defendant with what has been stated by this witness and hers.

The Court: Mr. Knowles, these charts which you have, on what did you prepare them?

The Witness: They are photographs of the latent finger-prints that were developed on the note. I prepared them by using the original negative and enlarging the areas.

The Court: Were the finger prints lifted from the ransom note and envelope in the usual, regular method used by finger-print men?

The Witness: That's right.

The Court: These charts are enlarged reproductions of those?

The Witness: That's right, sir. Perhaps I could explain how they were developed.

The Court: All right.

The Witness: The original ransom note was taken to the laboratory and the chemist dipped it into a solution of silver nitrate. The salt that was present in the ridge tracing reacts with silver nitrate and makes silver chloride, and when exposed to a bright light the silver chloride turns black. They are then photographed. We make a negative and enlarge the area on the negative that we want to chart.

Q. Was that method that you just outlined followed exactly in the case of the latent finger-prints found by you on the ransom note which is Government Exhibit 33?

A. That's right.

Q. All right, you may show them to the jury, whatever you have there.

Mr. Hogan: I take it my objection is overruled then.

157 The Court: If you will give me the basis of your objection, Mr. Hogan, I will rule on it, but I think unless you designate the basis I am not required to rule on it.

Mr. Hogan: I gave you my basis as I understood it.

Testimony of John P. Knowles

The Court: What is it?

Mr. Hogan: I say, I gave you my basis.

The Court: Repeat it again. I am not familiar with it.

Mr. Hogan: Suppose I have the reporter read it.

The Court: No. Give it to me now.

Mr. Hogan: My basis of objection is based on, or was based at that time, on not connecting these finger-prints up with the proper person, the defendant.

The Court: All right, objection overruled.

Mr. Hogan: Exception.

(The document referred to was filed, having been identified as Government Exhibit No. 69.)

A. This is the outside of the envelope containing the original ransom note. This was treated with silver nitrate solution. Three latent finger-prints were developed and these specimen photographs, of course, were made, and this is the original negative. I have marked the impressions on the photograph. This is the inside of the envelope. One latent finger-print was developed on the inside. This would be a negative of the photograph. This is the
958 first page of the original ransom demand note. There are no latent finger-prints of any value on this page. There are latent impressions, but they are not of value.

Q. Explain what you mean by that.

A. There are not enough characteristic points in them to identify them. Two photographs of that—it is a long specimen and we had to take two photographs to get it all in the picture. This is the reverse side of the first page of the ransom note. There are seven latent finger-prints developed on this specimen. That's the reverse side of the first page. Latent finger-prints are marked and the original negative is attached. On this reverse side of the first page I prepared two charts. This is the second page of the original ransom note. There are four latent finger-prints. Four were identified as finger-prints of Thomas H. Robinson. There are two charts. The areas from which the charts were prepared are marked. This is the reverse side of the second page of the ransom demand note. There was one latent finger-print of value developed and it was

Testimony of John P. Knowles

identified.

Q. Identified as what?

A. As the left thumb impression of Thomas H. Robinson.

Q. Suppose you refer to your note and tell us with reference to the finger-prints that you have identified as that of Thomas H. Robinson and tell us which
959 of his fingers made the print and how many appear on the envelope, the front side of the first page, the reverse side of the first page, the front side of the second page, the reverse side of the second page, and the inside of the envelope.

A. There was a total of sixteen latent finger-prints developed, three on the outside of the envelope, one on the inside of the envelope, seven on the reverse side of the first page, four on the second page, one on the reverse side of the second page. Thirteen of these latent finger-prints were identified, two on the outside of the envelope with his right thumb and right index finger impressions; six on the reverse side of the first page, two with his right thumb impression, one with his right index finger impression, one with his right middle finger impression, one with his left index finger impression, and one with his left middle finger impression. Two on the second page were identified with his right thumb impression, and two with his left thumb impression. One on the reverse side of the second page, as I stated before, was identified with his left thumb impression.

Q. Now, with reference to points of similarity, so that we may understand something about that. Suppose you explain to the jury what you mean by points of similarity in the charts and refer to known specimen
960 Exhibit 68-a and b.

A. I will pass these out.

Q. Pass them out and let each one of the jurors have one, and don't talk too fast so we can all see what you are doing.

A. This I am passing out is the known finger impression. These that I have with the red lines are the original charts. Those are photographs. I will pass out the

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original.

Q. Now, Mr. Knowles, when you say known impression, what do you mean by that?

A. That's the impression enlarged. That's the right thumb impression on the finger-print card enlarged seven and a half times. Now, in identifying a finger-print impression there are certain characteristics.

Mr. Brown: Just one moment, Mr. Knowles. Step over here so I can caution you. I want to step out of the presence of the jury.

(Mr. Brown and the witness proceeded to the judge's bench where Mr. Brown spoke to the witness out of the hearing of the stenographer and the jury.)

A. (Continuing) The chart marked No. 1 is an enlargement of the right thumb impression of one of the finger-print cards.

Q. Which one is the known specimen of Robinson?

961 A. It is the right thumb impression, right here.

Chart marked No. 1-a is the latent impression appearing on the reverse side of the first page of the original ransom letter. Now in identifying a latent impression there are certain characteristics which must be found in each set of impressions before you can reach the conclusion that they are identical. They are called the bifurcation, which is the splitting of one ridge into two, the ending ridge, the island and the enclosure. Now these points that I have marked on these charts, if you will look at No. 1, it is what is known as an ending ridge. The ridge ends at that point in both sets of impressions, that is, in the latent finger-print, and in the known finger-print there is an ending ridge right at that point.

Juror: Which one are you referring to as latent—1-a?

The Witness: 1-a is the latent finger-print. In other words, it does not appear, the detail is not as well defined as it is in the ink finger-print. No. 2 is an ending ridge. The ridge ends right at the point marked No. 2 in both sets of impressions. No. 3 is a ridge bifurcating downward; in other words, right at that point 3 the ridge splits into two in both sets of impressions and it comes back together again at the point marked eleven. It makes an

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692 enclosure. No. 4 is an ending ridge, you will notice on both impressions, there is an abrupt ending ridge. No. 5, if you will count, between 4 and 5 you will see that there are two ridges intervening. Then you have another abrupt ending ridge almost straight across from the No. 4, slightly below. No. 6 is a ridge bifurcating downward. You will notice above the point marked six the ridge is single, after you pass that point it is double. No. 7 is a ridge bifurcating downward. You will notice on both impressions. No. 8 is an ending ridge. There is only one ridge in between No. 8 and No. 7. No. 9 is a ridge bifurcating downward. No. 10 is a ridge bifurcating downward. If you will notice between 9 and 10 there are two ridges. No. 11, I called that to your attention before, it makes the lower end of that enclosure. No. 12 is a ridge bifurcating downward. By means of these characteristics I reached the conclusion that these two impressions were identical.

Q. Now, when you say "were identical"—what do you mean by that?

A. They could have been made by no other person.

Q. Than whom?

A. Than Thomas H. Robinson, or by no other finger than his right thumb.

Q. Now, I would like for you to introduce the photographs and the negatives of those, of that latent impression that you have testified about, as a part of
963 your testimony, marked Government Exhibit 70—and how many have we got?

A. These are merely photographs. I think you can introduce merely the original with the red lines on them.

(The two charts are handed to the Reporter, marked Government Exhibits Nos. 70-a and -b, and filed with the record.)

Q. I would like to introduce as Government Exhibit 71-a the negatives of the outside of the envelope; as Exhibit 71-b the negatives of the inside of the envelope; as Exhibit 71-c the first page of the original ransom note; as Exhibit 71-d the second page of the original ransom note; as Exhibit 71-e the reverse of the first page of the orig-

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inal ransom note; and as Exhibit 71-f the reverse of the second page of the original ransom note.

A. All right.

(The negatives referred to were marked Government Exhibits Nos. 71a, -b, -c, -d, -e, and -f, respectively, and filed.)

Q. I'll hand you Government Exhibit 32, being the letter addressed to Mr. Berry Stoll, care of Mr. W. S. Speed, signed "Alice," and ask you, Mr. Knowles, if you made an examination of that letter to discover the presence of latent finger-prints of Thomas H. Robinson Jr.?

A. I have.

Q. Would you detail to the jury the information whether you did or did not find on that letter or envelope fingerprints of the defendant, Thomas H. Robinson, Jr.?

A. I did. On the letter from Mrs. Stoll to Mr. 964 Berry Stoll there are eight latent finger-prints and one palm print developed, one on the outside of the envelope, three on the reverse side of the first page, the palm print on the second page, and four on the reverse side of the second page. Seven latent finger-prints were identified, one on the envelope with the right thumb impression of Thomas H. Robinson, three on the reverse of the first page with the left index, left middle and left ring finger impressions of Thomas H. Robinson, three on the reverse of the second page, two of which were found to be identical with the right thumb impression.

Q. In the same method that you have outlined, were charts and negatives prepared of the various exhibits?

A. That's right.

Q. I'll hand you Government Exhibit 30, consisting of an envelope addressed to Miss Elizabeth McHenry, and a letter and two pages signed "Love" from "A Seat" and ask you if you examined that exhibit to determine the presence or absence of finger-prints of this defendant, Thomas H. Robinson, Jr.

A. I did.

Q. Will you tell the jury what you found from your examination?

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A. There were twelve latent fingerprints, a total of twelve latent fingerprints developed, three on the
 965 outside of the envelope, one on the first page of the letter, two on the reverse side of the first page of the letter, one on the second page, and five on the reverse side of the second page. Five of the latent finger-prints were identified, one on the first page with the left thumb impression of Thomas H. Robinson; four on the reverse side of the second page, three with his left thumb impression and one with his right thumb impression.

Q. I'll hand you Government Exhibit 48, consisting of an envelope addressed to "The Custodian, 2725 North Meridian, Indianapolis, Indiana," and a single sheet addressed to "The Custodian," signed in typewriter "Mr. Kennedy, Apartment 2, 2735 North Meridian," and ask you if you examined that exhibit.

A. I did.

Q. Did you determine the presence or absence of fingerprints of this defendant, Thomas H. Robinson, Jr.?

A. Upon examination, eight latent finger-prints and one palm print were developed, one finger-print and the palm print on the outside of the envelope, one on the inside of the envelope, three on the front of the letter, and three on the back of the letter. Two latent finger-prints were identified, one on the outside of the envelope with the left middle finger impression of Thomas H. Robinson, one on the back of the letter with the left middle finger
 966 impression of Thomas H. Robinson.

Q. I'll hand you Government Exhibit 47, consisting of an envelope on which appears "Important. Read instructions for operating in this envelope. L. C. Smith and Corona typewriters, Incorporated," and one pamphlet "How to use Corona portable typewriter," and ask you if you examined that exhibit to determine the presence or absence of finger-prints of this defendant, Thomas H. Robinson, Jr.

Mr. Hogan: Mr. Brown, what is that exhibit number, please?

Mr. Brown: 47, I thought I said.

A. This specimen was not treated for latent finger-

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prints for the simple reason that the finger-prints were on there when it came in. I don't know just how they were made on there. I could guess.

Q. Don't guess. Tell us what you found.

A. There are three latent finger-prints of the specimen, that is, they could be seen without developing them, and two of them were identified, one with the left thumb impression of Thomas H. Robinson and one with the left index finger impression of Thomas H. Robinson.

Q. Did you have occasion to examine and compare the finger-prints, if any, found on the telephone box from the home of Berry V. Stoll? I'll hand you Government Exhibit 43.

A. Yes, I did.

967 Q. Tell the jury whether from your examination you determined the presence or absence of finger-prints of this defendant Thomas H. Robinson on the telephone box.

A. There are three latent finger-prints in the photographs. Two of them were not of sufficient detail to permit identification. One was found to be identical with the right middle finger impression of Thomas H. Robinson, Jr.

* Q. Now, Mr. Knowles, you have mentioned points of similarity, with reference to the use of the word points what do you in your technical language mean by that?

A. They are the points that would be charted on a set of impressions; in other words, we chart twelve usually, but that doesn't mean that there are no other points in the impression, there may be hundred of them, but we pick out the points of similarity that we think really stand out and chart them.

Q. Now, to determine the identity of certain latent finger-prints when you compare them with known specimen, how many points do you have to find before you make the identification?

A. It has been pretty regularly established that twelve points are sufficient.

Q. Why? Just explain to the jury why that is true.

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968 A. Well, it is beyond any mathematical possibility of making a poor or a mistaken identification by using twelve points.

Q. How long have you been in the Bureau of Investigation?

A. Seventeen years.

Q. During that time would you hazard a guess as to how many finger-print identifications you have made?

A. Thousands.

Q. In your entire experience, have you ever found that finger-prints made by two different persons are identical?

A. No. I have not.

Q. How many finger-prints do you have in the files of the Federal Bureau of Investigation?

A. The last count I saw posted was seventy-eight million.

Q. In that entire file, are there any two identical?

A. No.

Mr. Hogan: That's if he knows.

The Court: Of course. Have you looked at them all, Mr. Knowles?

A. No, I have not. From my own experience I have made four million comparisons in one case that we
969 are investigating.

The Court: All that you have investigated, you mean, you found not identical.

The Witness: That's right.

Mr. Brown: You may ask the witness.

Mr. Hogan: No questions, Mr. Knowles.

The Court: As I understand it, these comparisons were made between the finger-prints which were developed and the known finger-prints which are to be identified by Mr. Smith tomorrow.

The Witness: That's right.

The Court: Members of the jury, the Government has a few additional witnesses that they want to offer in evidence, but due to the closeness to the hour or adjournment I have decided to let them come in tomorrow morning.

We have decided to hold a short session tomorrow,

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probably a half day, or part of the morning, at least, and probably by noontime we will be able to adjourn for the day and week-end, resuming the case on Monday morning.

Accordingly, we will adjourn at this time. Do not discuss this case among yourselves or with anyone, or permit anyone to discuss it in your presence. We will convene tomorrow morning at 9:30.

970 Convened pursuant to adjournment, Saturday morning at 9:30 on December 4, 1943, and continued with the trial as follows:

Mr. Brown: I want to recall Mr. Knowles to put those exhibits in that I spoke to you about yesterday.

The Court: All right.

Mr. Brown: In connection with the next exhibit, the last one being 71f, I want to introduce two charts as 71g and 71h.

Now, with reference to the letter from Mrs. Alice Stoll to Mr. Berry V. Stoll, in care of Mr. W. S. Speed, I want to introduce a joined chart as Government Exhibit No. 72-a.

With reference to the first page of the same letter, I want to introduce a chart, marked 72-b, and the negative 72-c.

With reference to the envelope of the same letter I want to introduce an enlargement of the envelope as Government Exhibit 72-d, and the negative as 72-e.

The inside of the envelope of the same letter, I want to introduce an enlargement of that as Government Exhibit No. 72-f and the negative as 72-g.

The reverse of the first page of the same letter, I want to introduce as enlargement as Government Exhibit 971 No. 72-h and the negative as 72-i.

And the second page of the same letter, I want to introduce an enlargement as Government Exhibit No. 72-j and the negative as 72-k.

The reverse of the second page of the letter, an enlargement as Government Exhibit No. 72-l, and the negative as 72-m.

Now with reference to the exhibits pertaining to the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, I want to introduce the charts as Government Exhibit No.

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73-a and 73-b.

The envelope in which that same letter was contained, I want to introduce two enlargements as Government Exhibit No. 73-c and 73-d; and another enlargement as 73-e and the negative as 73-f.

The first page of the same letter from Mrs. Stoll to Miss McHenry, the enlargement as Government Exhibit No. 73-g and the negative as 73-h.

The reverse of the first page of the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, the enlargement as Government Exhibit No. 73-i and the negative as 73-j.

The second page of the letter from Mrs. Stoll to Miss Elizabeth McHenry, the enlargement as Government Exhibit No. 73-k and the negative as 73-l.

The reverse of the second page of the letter from 972 Mrs. Stoll to Miss Elizabeth McHenry, the enlargement as Government Exhibit No. 73-m and the negative as 73-n.

With reference to the testimony concerning the letter addressed to the Custodian, I would like to introduce the envelope with reference to the envelope addressed to the Custodian, an enlargement as Government Exhibit No. 74-a and the negative as 74-b.

The inside of the envelope addressed to the Custodian, an enlargement as Government Exhibit No. 74-c and a negative as 74-d.

The front page of the letter addressed to the Custodian, an enlargement as Government Exhibit No. 74-e and the negative as 74-f.

The reverse of the letter addressed to the Custodian, an enlargement as Government Exhibit No. 74-g and the negative as 74-h.

With reference to the testimony pertaining to the envelope on which there was found the words, "Important. Read instructions for operating in this envelope, L. C. Smith and Corona typewriter Company, Inc.," I would like to introduce two enlargements as Government Exhibit No. 75-a and 75-b, and the negative as 75-c.

And the reverse of the same envelope, two enlargements as Government Exhibit No. 75-d and 75-e; and the nega-

Testimony of Richard E. Smith

tive as 75-f.

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And the charts of the same as Government Exhibit No. 75-g and 75-h.

The Court: Now, Mr. Knowles, all of those negatives and enlargements and charts were the ones prepared by you and on which you based your testimony yesterday. Is that right?

Mr. Knowles: Yes, sir.

The Court: All right.

RICHARD E. SMITH was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Richard E. Smith.

Q. Where do you live, Mr. Smith?

A. Dallas, Texas.

Q. What position do you now hold?

A. I am with the North American Aviation Company at Dallas.

Q. During the year 1934 what position did you hold?

A. I was a Special Agent with the Federal Bureau of Investigation.

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Q. Assigned to what office?

A. Louisville.

Q. I will hand you—

Mr. Hogan (Interrupting): Mr. Smith, what is your address?

Witness: 5514 Emerson, Dallas.

Mr. Hogan: Texas?

Witness: Yes, sir.

Q. (Continuing) I will hand you Government Exhibits 68-a and 68-b and ask you what they are?

A. These are fingerprint impressions of Thomas H. Robinson, Jr.

Mr. Hogan: Now that is objected to.

Testimony of Richard E. Smith

Q. Well, who took them?

A. I did.

The Court: What is the basis of your objection?

Mr. Hogan: Well that is a conclusion of the witness, if Your Honor please, unless he knows something else.

The Court: All right. Just tell what you did, Mr. Smith.

Q. What did you do?

A. I took these fingerprint impressions in the Louisville Office subsequent to the arrest of Thomas H. Robinson, Jr.

975 Q. What was the date upon which you took those fingerprints?

A. The 13th of May.

The Court: What year?

Witness: 1936.

Q. As a Special Agent of the Federal Bureau of Investigation, prior to that time had you had occasion to make many or few finger prints?

A. On several occasions.

Q. What method did you follow in obtaining the fingerprints that you have testified about?

A. I used regular printers' ink that is used for taking fingerprints; and I placed his finger tips on the ink and then made the impression on the card.

Q. And state whether or not they are the fingerprints which you took of the defendant, Thomas H. Robinson, Jr.?

A. Yes, sir.

Mr. Brown: I would like to introduce this in evidence as Government Exhibits Nos. 68-a and 68-b.

The Court: Do either one of those have anything on the reverse side?

Mr. Brown: No, sir, I have covered everything up, Your Honor.

(The above fingerprint cards were handed to the Reporter and filed with the record.)

976 The Court: Just what is the difference between the two charts?

Testimony of Richard E. Smith

Mr. Smith: There is no difference.

The Court: Is one of one hand and the other of the other hand, or what?

Mr. Smith: They are both the same.

The Court: Are they duplicates?

Mr. Smith: Yes; taken at the same time subsequently. I mean, one after the other.

The Court: I mean is one one hand and the other the other hand, or are they both the same?

Mr. Smith: No, sir. They both contain the complete impression.

The Court: All right. Then you just took two impressions?

Mr. Smith: Yes, sir.

Cross-examination by Mr. Hogan.

Q. Did you or not take any impression of the left hand, or fingers of the left hand?

A. Yes, sir, they are on the chart.

The Court: No, I think he just took two impressions of each finger, one on each card. Is that right?

Witness: Yes, they are each a complete set.

977 The Court: Does the card itself designate what finger in each instance the impression is from?

A. Yes, sir.

Mr. Hogan: That is all.

EDWIN R. DONALDSON called as a witness for the government, was duly sworn and was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Edwin R. Donaldson.

Q. Where do you live?

A. 9624 Flower Avenue, Silver Springs, Maryland.

Q. What position do you occupy with the government?

A. Special Agent of the Federal Bureau of Investiga-

Testimony of Edwin R. Donaldson

tion.

Q. How long have you been a Special Agent of the Federal Bureau of Investigation?

A. Since September 1934.

Q. Attached to what division of the Bureau?

A. The FBI laboratory.

Q. Of what schools or colleges are you a graduate?

978 A. The Bradford Durfee Textile School, Fall River, Massachusetts.

Q. Have you had any experience as an analyst or research chemist?

A. Yes, sir.

Q. Where?

A. At the Mt. Hoke Finishing Company, at North Dyton, Massachusetts.

Q. Have you ever acted as an instructor in chemistry?

A. Yes, sir.

Q. Where was that?

A. At the National Association of Dyers and Cleaners Institute, at Silver Springs, Maryland, and in our own training schools.

Q. Have you had any other experience as a research chemist with any other bureau of the government?

A. As a research associate at the National Bureau of Standards, while working with the Dry Cleaning Institute.

Q. Have you had any experience as an analyst with any police department in the country?

A. I was connected with the Metropolitan Police Department of Washington, D. C. for approximately 4 years.

Q. I show you Government Exhibit No. 33, consisting of the envelope and two pages of the ransom note, and tell the jury whether you have ever seen that before?

979 A. I have.

Q. Did you conduct an examination on that ransom note or envelope?

A. On the envelope.

Q. On the envelope. (Continuing) To detect the presence or absence of blood?

Testimony of Edwin R. Donaldson

A. Yes, sir.

Q. Will you tell the jury how you made that examination?

A. There were stains appearing along the edge and on the face of the envelope which had the appearance of blood. Now portions of this stain were carefully removed and examined in the laboratory following the customary procedure, and it was determined to be blood.

Q. Can you go further and say whether or not it was human blood, or just blood?

A. Just blood.

Q. With reference to any adhesive tape that was forwarded to the laboratory, I will ask you if you made an examination of the adhesive tape to determine the presence or absence of any foreign substance on that adhesive tape?

Mr. Hogan: Now that's objected to.

The Court: It isn't shown what adhesive tape it was, is it?

980 Mr. Hogan: That is the point of objection.

Q. Well, did you examine the adhesive tape that was found in Apartment 2 at 2735 North Meridian Street?

Mr. Hogan: Now that is still objected to unless he can show if he knows—

The Court (Interrupting): I don't know that you have shown that the adhesive tape found in that apartment reached this man. He would not know that it was that adhesive tape except hearsay, would he?

Q. Did you receive in the laboratory, after October 16, 1934, any adhesive tape from the Indianapolis office of—

The Court (Interrupting): I don't believe, Mr. Brown, that you have laid the foundation by any witness that it was sent.

Mr. Brown: I don't believe I have but I thought I could get the other witness back to show that. I don't know that he received it but I am just going to ask him if he did or he didn't.

The Court: All right.

Q. On or after October 16, 1934, did you receive any sample or samples of adhesive tape which were forwarded to you by the Indianapolis Office of the Federal Bureau of

Testimony of Edwin R. Donaldson

Investigation?

981 Mr. Hogan: That is objected to, if Your Honor please, on the basis that it might have been any adhesive tape.

The Court: He is just asking him if he received any; he has not asked him what he found about it yet.

Q. (Continuing) And upon which you conducted an analysis?

A. I received adhesive tape but I did not conduct a chemical analysis thereon.

Q. Did you examine that adhesive tape to determine the absence or presence of any substance?

A. I did.

Q. Did you come to any conclusion?

Mr. Hogan: Now that is objected to.

The Court: The objection is sustained for the present.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Donaldson, you stated a moment ago that you did not ascertain whether or not the blood that you, or the substance that your chemical analysis determined was blood was human blood or animal blood. Why didn't you determine that?

982 A. Due to the small amount of material on the face of the envelope, and being advised—

Q. (Interrupting) Not what you were advised, now, but what your chemical analysis showed?

A. That it was blood.

Q. Then you can't state here whether the substance that you found on there and analyzed was human blood or animal blood?

A. That's right.

SAM K. MCKEE, was recalled by counsel for the government and was examined and testified as follows:

Redirect Examination by Mr. Brown.

Q. State your name to the jury?

A. Samuel K. McKee.

Testimony of Sam K. McKee

Q. You are the same Samuel K. McKee who testified on this case on yesterday, aren't you?

A. I am.

Mr. Hogan: If Your Honor please, I don't know whether they are entitled to recall this witness. They did not ask for the privilege of recalling him.

The Court: Have you any authority on that point, Mr. Hogan?

983 Mr. Hogan: No, only it is just my idea that you have to have permission to recall or, rather, indicate your intention to recall.

Mr. Brown: Well, Your Honor, I don't think it is of sufficient importance to take a chance, so the witness may stand aside.

The Court: All right.

984 CHARLES A. APPEL, called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Charles A. Appel.

Q. Where do you live, Mr. Appel?

A. 3510 Quesada, Washington, D. C.

Q. Is that Northwest?

A. Yes, sir.

Mr. Hogan: How do you spell the name of the street on which you live?

The Witness: Q-u-e-s-a-d-a. It is a little street, runs five blocks, in the Northwest section of the city.

Q. Where are you employed, Mr. Appel?

A. In the Federal Bureau of Investigation.

Q. In what division of the Bureau are you employed?

A. I work as an examiner in questioned documents in the laboratory of the Bureau, in Washington, D. C.

Q. How long have you been employed there?

A. I have been employed in the Bureau, this is my twentieth year.

Testimony of Charles A. Appel

Q. What type of work do you do in the Bureau—specialize in?

A. I examine handwriting and typewriting specimens for the purpose of determining the identity of the writer or whether it is the same machine, any question that concerns some paper with writing on it.

Q. In connection with the identification of mechanical impressions, typewriting and printing?

A. Yes, sir.

Q. Of what schools or colleges are you a graduate?

A. I graduated from the Georgetown University Law School in Washington, D. C.

Q. With reference to any special training that you have had to fit yourself for your work, can you tell the jury what special training you had?

A. Well, I attended lectures of J. Fordyce Wood of Chicago, Albert S. Osborne of New York, and Dr. Wilbur Souder of the Bureau of Standards of Washington, D. C. I read books on the subject of handwriting and document examination, organized the laboratory of the Bureau.

Q. With reference to your practical experience, have you had occasion to perform many or few experiments and much or little research, and have you examined many or few specimens in the course of your nineteen years experience in the Bureau?

A. I have examined very large numbers of specimens, hundreds of thousands of specimens. I have been training the examiners in the F.B.I. laboratory for years.

986 Q. Have you had occasion before this to testify in state, federal and military courts in this country?

A. Yes, I have.

Q. Have you testified in criminal trials before this?

A. All over the United States.

Q. I'll hand you Government Exhibit 49, which has been identified heretofore and testified to as a copy of the ransom note, typed on Corona portable typewriter, by Special Agent J. D. Reynolds, and ask you if you received that in the Bureau.

A. Yes. This was submitted to me for examination in the laboratory.

Testimony of Charles A. Appel

Q. I'll hand you Government Exhibit 50, being the heading of the Aetna Casualty & Surety Company, signed Thomas H. Robinson, Jr., and ask you if that was received in the laboratory for examination.

A. This also was submitted to me for examination in the laboratory.

Q. I'll hand you Government Exhibit 33, being the envelope and two pages of the ransom note, and ask you if you received that in the laboratory for examination and comparison with known specimens.

A. Yes, I did.

987 Q. I'll hand you Government Exhibit 48, being the letter to "The Custodian," typed "Mr. Kennedy, Apartment 2, 2735 North Meridian," and ask you if you received that in the laboratory for examination and comparison with known specimens.

A. Yes, this was submitted to me for examination.

Mr. Brown: It might save a little time if I show all of them to him at one time without putting him back on and off the witness-stand.

Q. I'll hand you Government Exhibit 51, which is a letter addressed to Mr. W. A. Smith, Special Agent, Federal Bureau of Investigation, U. S. Department of Justice, Kansas City, Missouri, and signed "Thomas H. Robinson, Jr." and ask you if you received that in the laboratory for examination with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 52, being headed "Preliminary and Declaration Sheet, Tennessee Valley Authority," signed "Thomas H. Robinson, Jr." and ask if you received that for examination and comparison with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibits 27 and 28, being guest registration cards at the Tyler Hotel, one dated September 7th, the other dated October 8th, and ask you to examine those and tell the jury whether you received those for examination and comparison with known specimens.

988 A. Yes. These were submitted to me for examina-

Testimony of Charles A. Appel

tion.

Q. The name appearing on these registration cards being "John Ward"?

A. Yes, sir.

Q. I'll hand you Government Exhibit 53, consisting of a single sheet of paper, the last entry being Mr. Jerry Dobson, South Bend, Indiana, and ask you if you examined that for comparison with known specimens.

A. Yes. This was submitted for the comparison of the last name, Jerry Dobson, South Bend, Indiana.

Q. I'll hand you Government Exhibit 26, which is in the name of John W. Ward, and on which there appears "Saunders-U-Drive-It-Yourself System," and ask you if you received that for examination and comparison with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 46, which is signed "Lafayette Court Company by J. R. Johnson," and "Thomas W." or "H. Kennedy," I am not able to determine which, and ask you if you received that and conducted an examination of it.

A. Yes. That was submitted to me. Yes, sir.

Q. I'll hand you Government Exhibit 54, guest registration card, "T. M. Warner," the "Waldorf-Astoria, New York," and ask you if you received that and examined it.

989 The Court: What is the initial?

Mr. Brown: T. M. Warner.

A. Yes, I did.

Q. I'll hand you Government Exhibit 56 and Government Exhibit 57, 56 being on the heading "Patterson & Schmidt," order for Plymouth 4D Sedan, signed "Leslie K. Burgess," and ask you if you conducted an examination and comparison with known specimens.

A. Yes, I did.

Q. Government Exhibit 57, on which there is printed "Leslie K. Burgess, 2042 Long Beach Road, Long Beach, New York," and ask you if you conducted an examination of that.

A. Yes, I did.

Testimony of Charles A. Appel

Q. I'll hand you Government Exhibit 56, being the heading "Hotel St. George," "T. Morton Wallace," and ask you if you received that and conducted an examination of that document.

Mr. Hogan: What was that number, Mr. Brown?

Mr. Brown: 55.

A. Yes, I did.

Q. I'll hand you Government Exhibit 59, consisting of a guest registration card, "Ritz Carlton Hotel Corporation," "Morton Wallace," and ask you if you conducted a comparison and examination of that document.

A. Yes, I did.

Q. I'll hand you Government Exhibit 60, head-
990 ing "Storage Proposal, Forrest Hills Fireproof Storage," signed "J. H. Baker," and ask you if you received that and conducted an examination with known specimens.

A. Yes, sir, I did.

Q. Government Exhibit 62 apparently is a guest registration card, and the names "Neill Morton and wife" appearing thereon, and ask you if you received that and conducted an examination and comparison with known specimens.

A. Yes, sir, I did.

The Court: Any designation of the hotel or anything?

Mr. Brown: Ambassador Hotel at Los Angeles, it is numbered 434. I think that appears from other evidence. I don't see it on here. I might be looking at the wrong place, but I don't seem to see anything.

Q. I'll hand you Government Exhibit 63, Los Angeles Biltmore, the last entry being "Leslie Burgess and Wife, Highland Park, Illinois," and ask you if you received that and conducted a comparison and examination with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 64, Constance Hotel, Pasadena, California, "Mr. and Mrs. L. K. Burgess," and ask you if you received that and conducted an examination of that.

A. Yes, I did.

Testimony of Charles A. Appel

991 Q. And Government Exhibit 65, Constance Hotel, "Mr. and Mrs. L. K. Burgess," and ask you if you received that and examined that.

A. Yes, sir.

Q. I'll hand you Government Exhibit 66, being application for membership in the Automobile Club of Southern California, "Leslie K. Burgess," and Government Exhibit 67, being membership card, Automobile Club of Southern California, and ask you if you received those and conducted an examination and comparison with known specimens.

The Court: Is there any writing on 67?

The Witness: No.

Mr. Brown: Apparently no, there is no handwriting.

A. I examined both of those specimens.

Q. Now, Mr. Appel, would you outline for the jury what method or procedure you followed in the examination and comparison of the questioned documents with the known documents?

Mr. Hogan: If Your Honor please, I want to interpose an objection at this time to the testimony of this witness, on these grounds. There has not been furnished to the defendant or his counsel any notice that they intended to make any comparison between a genuine and questioned specimen of the handwriting, and under the Kentucky Statutes it is a necessary requirement that a notice be given to that effect.

992 The Court: This is not a case in the Kentucky Court.

Mr. Hogan: I know, Your Honor, and there is not, so far as I know, any federal law that makes that requirement, but under the Erie Railroad decision I think where there is no law—

The Court: That applies to civil cases.

Mr. Hogan: That's my point, Your Honor, please. If you will let me finish my statement for the record, please.

The Court: Yes.

Mr. Hogan: There is no federal law, so far as I know, that makes the requirement to furnish the notice of the intention to prove genuine or questioned documents, but there is a Kentucky statute that makes that requirement,

Testimony of Charles A. Appel

makes the giving of notice a necessary requirement where signatures or specimens are in question. Therefore, there not being any federal law, my position is that the Kentucky law prevails and my basis for that or the legal opinion or basis of that is, of course, the Erie Railroad decision or the opinion from the Supreme Court known as the Erie Railroad case.

The Court: The Supreme Court has held, quite often,

I believe, that criminal trials in Federal Court are
993 not governed by the state laws. The case of Erie

Railroad against Tompkins, which you refer to, deals with the civil trials, or trials in civil suits, not criminal trials. The objection will be noted and overruled. Exception.

Q. All right, Mr. Appel, just outline the method for determining the examination of the questioned documents with the known specimens.

A. I analyzed the typewriting on the ransom letter and the other questioned letter for the purpose of determining the irregularities in the manner in which the type is impressed on the paper, due to mechanical defects in the typewriter, and I made the same comparison with the known standards which were written on the machine found in the hide-out.

Mr. Hogan: Now that's objected to because of the words "found in the hide-out."

The Court: All right, objection sustained to those words. The jury will not consider that part of the answer.

A. (Continuing) On the known typewriter standards which were submitted to me for comparison. I made an analysis of the handwriting, first the hand-lettering on the ransom letter, and compared it with the standards of known hand-printing and handwriting. I made analysis of the handwritten signatures in these various names on the
994 different hotel registers. The purpose of all that was

to ascertain the habits of the writer and compare those habits with the habits displayed in the known specimens. The analysis was all based on an examination of the specimens themselves. After I got through, I prepared enlargements of those so that I could point out the char-

Testimony of Charles A. Appel

acteristics and evidence which I found on those specimens, and I have brought those enlargements here for the purpose of illustrating that evidence.

Q. All right, from your examination and comparison with the known specimens of all questioned documents that I have submitted to you in the form of various Government exhibits, did you form any opinion?

A. Yes, I did.

Q. Let me finish—did you form any opinion as to the person or typewriter that was used to write or print each of the questioned documents in evidence?

A. Yes, with the exception that there were two, that automobile card had no questioned writing on it and there was an envelope in that—there were two specimens submitted, one an envelope, which had no questioned writing on it.

Q. Now, would you refer to the charts that you have. Perhaps I had better get his opinion first with reference to Government Exhibit 33, which was submitted to

995 you for the purpose of comparing the typewriters. Did you come to any opinion as to the type of machine that that ransom note was typed by?

A. Yes. I came to the conclusion this was written on a Corona typewriter.

Q. With reference to Government Exhibit 48, did you form an opinion as a result of your examination, what type of typewriter produced that letter addressed to "The Custodian"?

A. I came to the conclusion that this typewriting on Government's Exhibit 48 was written on the same Corona typewriter as the exhibit you just showed me.

Q. The ransom note?

A. The ransom note; yes, sir.

Q. With reference to Government Exhibit 52, consisting of certain handwriting—hand printing and signature—did you come to any conclusion as to the genuineness of that signature when compared with the known specimens which you have heretofore testified you examined, and if you did come to such an opinion please tell the jury what the opinion is.

Testimony of Charles A. Appel

The Court: Whom is that signed by?

Mr. Brown: T. H. Robinson.

A. I came to the conclusion this signature "Thomas H. Robinson" was written by the writer of the known writing signed "Thomas H. Robinson, Jr."

996 Q. Being Government Exhibit 51?

A. Being Government Exhibit 51, and that the hand printing on this Exhibit 52, Tennessee Valley Authority application, was written by the writer of the Aetna application.

Q. Being Government Exhibit 50?

A. Being Government Exhibit 50.

Q. Now I am going to hand you these exhibits and let you, in the interest of saving time—let you examine them yourself without me asking you about each one. You can discuss each one of them and tell the jury your opinion, if it was your opinion, that they were the same, or if it was your opinion that they were different from the known specimens that you have heretofore testified about.

A. On Government's Exhibit 66, the application for the Automobile Club, Southern California, I came to the conclusion that the address, occupation, date and signature "Leslie K. Burgess" were written by the writer of the known specimens which were indicated to me were written by Thomas H. Robinson, the defendant.

On Government's Exhibits 65 and 64, cards of the Constance Hotel, Pasadena, California, I came to the conclusion that the writing of the names "Mr. and Mrs. L. K. Burgess" and the address of "132-24 Maple Avenue, Flushing, New York, N. Y." on the one card, which is Exhibit

65, and the address "2042 Long Beach Road, Long Beach, New York" on the other card, which is exhibit 64, were written by the defendant.

997 On Government's Exhibit 63, the registration sheet of the Los Angeles Biltmore Hotel, I came to the conclusion that the last entry, "Leslie Burgess and Wife, Highland Park, Illinois" was written by the defendant.

With reference to Government's Exhibit 62—

Q. I believe that's the Ambassador Hotel, Los Angeles. Mr. Jenkinson introduced that.

Testimony of Charles A. Appel

A. (Continuing)—I came to the conclusion that the signature or the name, rather, "Neill Martin and Wife" and the address "160-12 Hillside Avenue, Hollis, Long Island, New York" was written by the defendant.

With reference to Government Exhibit 60, the Forrest Hills Fireproof Storage, I came to the conclusion that the signature "J. H. Baker" in two places was written by the defendant.

Mr. Hogan: If Your Honor please, he is designating them as written by the defendant. I think that's a mis-designation there. I think he should say either by the writer of the known specimens or the other specimens.

Mr. Brown: The known specimen is Thomas H. Robinson, Jr.

The Court: Written by the same person, you mean, as who wrote the known specimen?

The Witness: That's right, by the writer of 998 the known specimens which were signed "Thomas H. Robinson, Jr."

With reference to Government Exhibit 55, the Hotel St. George, I came to the conclusion that the name "T. Morton Wallace, 320 North Ridgeland Avenue, Oak Park, Illinois" was written by the writer of the known specimens, signed "Thomas H. Robinson."

With reference to Government Exhibit 59, the Ritz-Carlton Hotel Corporation, New York City, I came to the conclusion that the name "Morton Wallace, 320 North Ridgeland Avenue, Oak Park, Illinois, Chicago Board of Trade," was written by the writer of the known specimens, signed "Thomas H. Robinson."

The Court: Those specimens signed "Thomas H. Robinson" or "Thomas H. Robinson, Jr."

The Witness: Thomas H. Robinson, Jr.

Mr. Brown: Thomas H. Robinson, Jr., both of them.

A. (Continuing) With reference to Government's Exhibit 56, an order for a Plymouth sedan of Patterson & Schmidt, dated April 5th, 1935, I came to the conclusion that the signature of the purchaser, "Leslie K. Burgess," was written by the writer of the known specimens, signed "Thomas H. Robinson, Jr."

Testimony of Charles A. Appel

With reference to Government's Exhibit 54, the Waldorf-Astoria, New York, I came to the conclusion that
 999 the name "T. M. Warner"—there is the name of the street, "O-n-w-e-r-t-i-a Drive," I am not sure of the "r," Lake Forrest, Illinois, was written by the writer of the known specimens, Thomas H. Robinson, Jr.

With reference to Government Exhibit 46, which is a leasing agreement with the H. H. Woodsmall Agency, I came to the conclusion that the signature of "Thomas W. Kennedy" was written by the writer of the known specimens, "Thomas H. Robinson, Jr."

With reference to Government Exhibit 26, which is an agreement of the Saunders-Drive-It-Yourself System, I came to the conclusion that the pencil signature "John W. Ward" was written by the writer of the known specimens, Thomas H. Robinson, Jr.

With reference to Government's Exhibit 53, which is a page of registrations of different people, I came to the conclusion that the last signature, "Mr. Jerry Dobson, South Bend, Indiana" was written by the writer of the known specimens, "Thomas H. Robinson, Jr."

With reference to Government's Exhibits 27, the Tyler Hotel, I came to the conclusion that the writing "John Ward, 211 Union Avenue, Memphis, Tennessee," and with reference to Government Exhibit 28, the Tyler Hotel, the name "John Ward, 211 Union Avenue, Memphis, Tennessee," I came to the conclusion that they were written by the writer of the known specimens, "Thomas
 1000 H. Robinson, Jr."

Q. Now, Mr. Appel, were charts prepared of the known specimens and the questioned documents after you reached your conclusion?

A. Yes, sir.

Q. Do you have those charts here?

A. Yes, I do.

Q. Would you hang them up here and explain to the jury the reason for your opinion and conclusion?

The Court: You say they were prepared after or before?

Q. When were they prepared?

Testimony of Charles A. Appel

A. Those charts were prepared within the past two weeks.

Q. They are enlargements of these known and questioned documents, are they not?

A. Yes, sir.

Mr. Hogan: Now, if Your Honor please, until they go further and show that they are accurate enlargements, I will certainly object.

The Court: Of course, they will have to be accurate. The witness will have to be examined on that.

Q. They are exact enlarged reproduction of the known and questioned documents, are they not, Mr. Appel?

A. Yes, sir. These were prepared by photographing the original documents and producing an enlarged print. These prints were then compared with the originals, and I am prepared to state that they are accurate enlargements of the originals. The only thing that's additional on there are some marks which I placed on there in order to describe the characteristics.

Q. All right, hang them up.

Mr. Hogan: Did you make the enlargements, yourself, Mr. Appel?

The Witness: No, sir.

Mr. Hogan: If Your Honor please, I think it would have to be shown that he either made them or they were made under his supervision.

The Court: Let the witness say how they were made.

The Witness: They were made under my immediate supervision and after they were made I compared them with the originals. They are exact, accurate enlargements of the originals.

The Court: Those that you are putting on there are the same kind of enlargements of known documents?

The Witness: These are photographs of the questioned documents on my left, and those on my right are the known documents.

The Court: Were those enlargements of the questioned documents made in the same way?

The Witness: Yes, sir. They were all made under my immediate supervision and under my instructions,

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and I observed the process, and then after they were made they were compared with the originals.

The Court: What is that small one?

The Witness: These are the rest of the questioned documents, hotel registration cards.

The Court: Made in the same way?

The Witness: They were made in exactly the same way.

The Court: I think, Mr. Brown and Mr. Hogan, we will go into some little time before we start into the examination of this witness on the basis of his opinion. We better take our recess.

Members of the jury, we will take a short recess at this time. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence. A short recess.

A short recess was taken, after which the hearing was resumed, as follows:

1003 After recess the following proceedings were had:

Direct Examination Continued by Mr. Brown.

Q. Mr. Appel, would you explain those charts to the jury, and point out such features that in your opinion you found to be present both in the known specimen and in the questioned documents? I will not interrupt you by questions. Just explain them in your own way, referring, of course, each time to the known specimen and the unknown specimen; and you characterize the known specimen.

A. I will examine first Exhibit No. 33, the ransom typewritten letter. In an examination of typewriting, the analysis is for the purpose of finding defects or variations from the perfect in the way in which the different letters are struck on the paper. I have marked numbers to refer to certain characteristics.

No. 1 refers to the letter "z." In the small letter it strikes a little high compared to the rest of the letters on the line of writing. At the same time the capital letter "S," the base of it is emphasized or bigger because the letter strikes on the bottom first and therefore strikes heavier on the bottom. It also seems to slant slightly to the left

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in the capital letter and in the smaller letter.

1004 Now we find that same characteristic in the letter "s" in the ransom letter. It is a little high for both the capital letter and the small letter. In the capital letter, the letter at the bottom is much wider and more emphasized because it strikes there first. The letters are all supposed to strike all at the same time. It also seems to slant to the left. These are measured by instruments in the laboratory.

No. 2 refers to the letter "A." These capital "A's." This letter also slants slightly to the left and it strikes heavier on the left side. It isn't quite as clearly visible as the letter "s." I have marked some of them here with the number "2."

That same characteristic occurs in the known writing on the typewriter. That letter strikes heavier on the left, and it seems to slant a little. The small letter is a little bit low.

The small letter "w" and the capital letter "W" are numbered No. 3. That letter strikes high. It is quite high compared to the other letters. At the same time the upper right hand portion of that letter does not strike as heavy as the other portions and the small line which occurs there is for that reason apparently deformed, or not as clear as the other letters.

1005 No. 4 refers to the letter "m" which strikes on the right side first. It is heavier on the right side. It also seems to slant a little to the right. That same characteristic exists here in the known. It strikes a little heavier on the right and it slants a little toward the right. That is not as easy to see as some.

No. 5 is the letter "y." On the upper right hand portion the horizontal line seems to be a little abbreviated and not quite as long as it should be. You will see that also in the known writing. I have only marked two of these.

No. 6 refers to this underline. This is a short bar that is struck one after the other to make a long line. This particular bar strikes heavier on the right or it is a little wedge-shaped and it causes the line to look wedge-shaped—

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it is not quite as wide a line on the left as the right.

The same thing appears on that line in the known writing. It strikes heavier on the right because the same piece of metal is heavier on the right. It makes the whole line wedge-shaped.

The letter "T"—the capital letter "T" has a very distinctive characteristic readily seen with the naked eye. It is marked No. 7. This letter is emphasized on the left, at the top particularly. You will see it wherever it is, whether it is marked No. 7 or not. If it is struck
1006 heavier it is shown more plainly. At the upper left it will be seen that the letter strikes heavily and it is wider there either because the letter is actually deformed at the top or because it strikes heavier on that side. You will see it here and also in the known writing. Sometimes the little down line on the upper right does not seem to register at all—it does not strike as hard.

The small letter "g" is characteristic No. 8. In the questioned writing here on the left in the word "menacing" and in the word "right" the upper portion of that letter strikes first which makes the upper portion darker and wider than the lower portion. You will see that same characteristic here in the known typewriting because the letter is adjusted on the arm in such a way that the upper part of the letter strikes first.

Now those are some of the characteristics I found in this typing. It is not any particular one of the characteristics but it is the combination of characteristics and the same thing in the known typewriting which leads me to believe that they were written on the same typewriter.

Q. All right, Mr. Appel, refer to some of the other exhibits and we will go through some of those?

A. The second page of the ransom letter has the same characteristics although I haven't marked them. The "s" is higher, the "t" strikes heavier on the left, etc.
1007 There is no use to go into all of that.

The front page and this page has hand-lettering on it. That hand-lettering was compared with the hand-lettering on the Aetna application. The hand-lettering on the ransom letter is scribbled or written scrawly all over

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the area where that writing appears at the top of the page. Now I do not believe that would be done simply as the result of carelessness. These letters are distorted and I believe them to be disguised in an effort to hide the characteristics of the writing of the writer.

You will see down here in the name of the intermediary at the bottom that an effort has been made to curve those lines so as to make them most unnatural.

Now, comparing that with the known hand-lettering you have the first letter, "T." This is written in a characteristic way with a down stroke and a cross bar at the top is written slanting up. You see in the known hand-writing in the word "Thomas" that does not occur, while in every place else it is true. There is a tendency in the known writing for the writing to slant in this way, slanting very much the same way as the questioned writing, and the horizontal line on the "T" slants up. I marked that as the first characteristic.

Second, the letter "f" consisting of a downward stroke and two horizontal lines, the second horizontal line
 1008 is shorter than the top one, and the other one slants up. The same exists in the "t" and remains with the questioned writing because the writer did not realize that that was his writing habit. Here it is in this letter "f."

The letter "s" is peculiar in that the bottom portion of that line, instead of being curved, it is curved sometimes—it is twisted but there is a tendency to curve the upper portion and then straighten it out. That also shows in the dollar sign or any letter similar to that "s." That characteristic is shown by the No. 3 in the known hand-printing. I do not mean that every time, or in absolutely every instance that is true, but simply that there is a tendency to do that. It is because it is a habit and that habit came out in writing these letter "s's" in the ransom note. At the same time there is a tendency to make a small down stroke in the beginning of the letter "s." That also is a habit whereas in the "s" in the known writing it is not always as plain in one place as it is in another.

The letter "m" is made in two ways. This is a printed

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"m" in the word "same" and in the word "misses" in the ransom letter. The letter appears in that way and also as a partial script letter as in the word "mister" here. Now the script form of that letter is written in the top of the ransom letter. That is made peculiarly in that there are three separate and definite humps—one is made
 1009 with the hand lifted and another is made with the hand lifted, and the third is made that way.

Now that is the same way it is made in the known writing. The "n" is just a part of the "m" and it exhibits the same thing in the known hand writing although in the questioned writing it is the capital printed letter and follows the same form. I marked that No. 5.

A very peculiar characteristic occurs in the questioned hand-printing marked No. 6. It is the letter "u." This "u" is made with a down stroke. Instead of curving on up to the right to make the letter, the writer lifted the pen and made an entirely separate and distinct stroke. Some people who make this letter with two strokes curve it on the right part of the letter, but here it is on the left.

You will find that same characteristic in the known hand-printing. There is no attempt to curve that down stroke, then the hand is lifted and the curve stroke is used to complete the letter. That is a very peculiar type of "u." I have never seen one like that exactly.

Now you will see that that exists here in the questioned hand-printing. This is marked No. 6.

The letter "y" is marked No. 7. This letter consists of a long slanting stroke with a little additional line so as to complete the upper portion. In the known hand-
 1010 printing they make the same letter, a long stroke with the little line at the top, and in proportion to the length of that line the size of the whole letter is typical.

I have marked this small letter "f" with a No. 2 just as the big letter "F" was marked No. 2 because that small letter also presents a peculiar characteristic as does the "u." It is the peculiar unusual habits which assist in the identification. There is a curved line down and then this cross line. The down stroke curves and it has a tendency to curve two ways. It is a small printed letter and not a

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capital.

The letter "o" in the questioned writing is made by beginning a stroke at the top which comes down rather straight and ending right there. It may be curved around and not symmetrical, but the thing that I am calling attention to is the fact that the opening is almost exactly in the center portion of that letter. Now that is the way that letter is made in the known writing. In other words it comes straight down in the upper center portion of the letter and that is where the letter is closed. You see it here in the known and the line comes up exactly similar to the way it does in the questioned. It is an unconscious motion habit. Some people make it differedt but not exactly with the same motion. It is the tendency to 1011 which I call your attention.

The figure "5" has a long horizontal stroke, and—

Q. (Interrupting) Suppose we go along a little faster and go through some of the other exhibits?

A. All right. Here we have some more typewriting, on Exhibit No. 48. You will find the same characteristics. The "s" which is heavy on the bottom, and the "a" which is slightly slanting to the left, and the "t" which is heavy on the left, and the "g" heavy at the top.

One feature of that typewriter which I have not mentioned is the fact when you strike a letter hard it has the tendency to strike it twice. That exists here in the letter "t." You will see here that it is struck over twice, with a tendency to make it heavy.

The handprinting on this Tennessee Valley paper, which was Exhibit No. 52, exhibits the same characteristics. The "s" with the straight line at the bottom. The "t" with the line at the top which tends to slant up. The "e" with the tendency of a straight line at the bottom. The "y" with a long slanting line, with a little short line to complete it.

Here for the first time we have the signature of Thomas H. Robinson Jr.

Mr. Brown: Let us examine it, Mr. Hogan. I think we have blocked part of it out but I want to be sure.

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1012 If you will come over here to the back side, we can examine it upsidedown.

(Mr. Brown and Mr. Hogan examine the specimen.)

Q. All right, now you may turn that over.

Mr. Brown: I would like for the record to show that on government Exhibit No. 51 there has been superimposed on the face of the exhibit a piece of brown paper completely covering the words except the address and,

"July 1, 1936

"Dear Sir:

"Please turn over to my mother Mrs. Thomas H. Robinson Sr. all of my personal effects that are free and unattached.

"Thomas H. Robinson, Jr.

"Witness: A. E. Farland

U. S. F. B. I. Kansas City, Mo."

A. We are now dealing with writing characteristics. In the first place the slant has the same characteristic and it is exactly the same on the known and the questioned writing.

Then I have marked No. 1 to note the tendency of the writer to write above the line. A very habitual thing. You will see it in the known signature, and also at other places. Wherever there is writing, he has a tendency to write just above the line. I have marked there numbers to indicate characteristics.

No. 2 is to show the tendency to prolong the letter
1013 to the right. He did not do that on the "Jr" here, but he did on here and on other portions of the known writing. If you compare this signature to Thomas H. Robinson Jr. with the questioned and the known you will find the shapes of these letters are just the same, the reason being that the signature is written so frequently that the habitual letters are deformed and become characteristic of the writing habits of this man. The motions he uses are his, and nobody else's. For instance, the capital letter "H" in the middle initial does not look like an "H" at all. The

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first line is short and the first and second portions are disconnected and this second stroke is long.

Now that handwriting on that exhibit was compared with each of these registration cards and all of the different characteristics were analyzed. The first characteristic I have referred to was the habit of writing just above the line. You will see it here in the registration cards at the Tyler Hotel. Instead of writing "John Ward" on the line, the writer writes it just above the line just as he does it here in the known handwriting.

The No. 2 denotes the tendency to extend the end lines or finishing lines. A sort of extension is added to the last stroke on the last word on the line. Now that does
 1014 not always occur. For instance, here is the letter "e." That stroke was not prolonged very far. Here is the letter "d" on the questioned and here is the letter "d" on the known.

But the third characteristic is the letter "e" for the reason that in writing that as rapidly as he has done, the writer has made what looks like the letter "i." There is no loop in it at all, because he has a fast up and down motion and he is in a hurry in an effort to get through. You will find that here in the questioned at the registration card of the Tyler Hotel, and here we see it in the known.

The fourth characteristic that I have marked is the period. It is frequently written directly under this extended line at the end of the word. It is not above the line. You see it frequently in the word "avenue." Here it is in the abbreviation in the word "Mo.," and here it is in the word "unattached," directly under that stroke. Here it is; and in writing a name like this, there is a tendency for these periods to be one a little higher than the other. You see those same characteristics in the signature of Jerry Dobsen, South Bend, Indiana. You will see that on government exhibit No. 33. Here are the extended lines, the tendency to write above the line, and the letter "e" which becomes a line instead of a loop. The capital letter "M" is peculiar in that the first down stroke
 1015 is very long, the second one is shorter and the third one is shorter again. The whole letter "m" seems

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to get smaller at the end.

The same thing in the word "w" because it is written very rapidly. The first stroke is curved at the top and the whole letter seems to slant downward. Here in the known you will see a big long stroke way up high and the second is slanting. Instead of it being joined up and down, the whole thing is curved.

Here is an "m" in the known with a long first stroke and shorter second stroke. It also tends to slant.

Now those same characteristics and others appear in all of these different registrations and different names, different in the name of Leslie K. Burgess and wife at Highland Park, Illinois, on Exhibit 63. The writing is above the line. There is a line there provided for the writer to write upon but instead of that he has written above the line because it is his habit.

In this particular registration, there is a difference in the letter "i." That letter is a very peculiar one. It is not written with the same motion other people use but it looks like, very much like a "9" some foreign people use. Here it is in the known handwriting. It is a variation from that of most people. Here in this registration we also have the capital letter "H" just as it occurs in the known signature of Thomas H. Robinson. The first and the last portion are not joined at all, and the stroke goes around leaving an impression of an increasingly high letter.

The letter "k" is also peculiar. This man has a rapid up and down motion causing the letters "k" or "h" to join in this portion so you cannot be sure exactly how that letter is shaped. After making the loop it is frequently almost a straight line. The lower portion of that letter is written over so you cannot always be sure exactly how it does look.

Then, again, we have the period after the "l" which is written directly underneath that stroke just as it occurs in the known.

Here we have the letter "e" written like the letter "i" because it is written so fast there is no loop. Here on the registration, Government Exhibit No. 62, "Neal Martin

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and wife" have the same characteristics in the capital letter "H" as it is in the known signature, and the capital "I" and the long stroke after the word "avenue," and the period underneath it.

And the signature in the registration of Leslie K. Burgess, Government Exhibit No. 64, with the capital letters, long first stroke, abbreviated second stroke. We
1017 have the long stroke at the end of a word, and we have the periods which follow the letters and appearing directly under the line. We think the fact that the man tends to write above the line of writing and not on it.

The letter "e" which looks like an "i" is there. Here is "u," with a period directly under that line.

Here is the signature of John W. Ward on Exhibit No. 26, with pencil. We have in the first place the capital letter "J" which is characteristic of the signature of Thomas H. Robinson, and a large loop at the upper part of the letter and a thin one down toward the bottom. Here we have it in the questioned writing. The lines cross at the beginning and ending of that letter. Instead of being further apart they all come together right at that place. The upper portion is made very large at the beginning, and then it narrows at the top to produce the characteristic shape of the letter.

The letter "w" has a long first stroke and rounded at the center stroke. Here is the slant.

The small letter "r" is also peculiar in that there is a little wiggle and an additional curve consisting of a curve in an effort to begin that letter, the upper portion of it.

It is not a small straight line, but it is a complicated
1018 "r" because the upper stroke is higher than the other. I have marked it No. 12. That does not always appear. In other places that letter is simply curved over and not like an "r" at all. So you have two different habits in the curving of that letter.

In the word "Ward" we have a little wiggle in the upper portion of that letter.

Q. If you will proceed rather rapidly through the rest—

A. (Interrupting) Well, I have marked these same

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curves—the capital “W” with the long stroke at the end of the letter; and the long stroke at the end of the line of writing.

In Government Exhibit No. 60, the name J. H. Baker is written between two lines above the line of writing. It does not occur on any one line. We have the letter “j” which is very similar to this in the known—the “h” and “k” are twisted at the top.

It is a little difficult to see the writing on Exhibit No. 54 because that was a photostatic copy, but the characteristics are all there. He writes above the line of writing. He extends the lines, and he puts the period right underneath that line.

Each and every one of these exhibits was examined for the characteristics which I have mentioned. It is not the “w,” not the writing above the line of writing, not

1019 the “m” nor the “r” nor the period. It is not any individual one of those characteristics; but it is the combination in the questioned writing and the same combination in the known writing which caused me to come to the conclusion that these questioned exhibits were written by the writer of that known writing.

Mr. Brown: That is all.

Mr. Hogan: No questions.

Mr. Brown: Now, Your Honor, I would like to offer in evidence Government Exhibits Nos. 26, 27, 28, 33, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 62, 63, 64, 65 and 66, which was included in Mr. Appel's testimony.

The Court: You want to do what with them?

Mr. Brown: I think they were tentatively introduced until they were identified by this witness.

The Court: All right.

(The above documents were filed with the record, having been marked before.)

ROBERT H. LAUGHLIN was called as a witness by the government and after having been first duly sworn was examined and testified as follows:

Testimony of Robert H. Laughlin

Direct Examination by Mr. Inman.

Q. State your name?

1020 A. Robert H. Laughlin.

Q. Where do you live?

A. Washington, D. C.—in the suburb of Brookmont, Maryland.

Q. And your street address?

A. 6220 Broad Street, Montgomery County.

Q. Did I understand you to say that Washington was a suburb of Brookmont?

A. No; I said that Brookmont was a suburb of Washington.

Q. Where are you employed?

A. Federal Bureau of Investigation.

Q. In what capacity are you employed?

A. Chief Clerk at the present time.

Q. Chief Clerk of the Bureau?

A. Yes, sir.

Q. In October 1934 where were you employed?

A. I was employed in Louisville, Kentucky.

Q. And were you so—

A. (Interrupting) Pardon me—did you say October, 1934?

Q. Yes?

A. No. I was employed by the Bureau but I was in Detroit, Michigan at that time.

1021 Q. In May 1936 where were you employed?

A. Louisville, Kentucky.

Q. With the Federal Bureau of Investigation?

A. Yes, sir.

Q. Who was in charge of the Louisville office at that time?

A. Mr. O. C. Dewey was in charge.

Q. On the 13th of May, 1936, did you receive anything from Mr. John Bugas?

A. Yes; I did.

Q. Who was John Bugas?

A. Mr. Bugas was a Special Agent who was from Los Angeles but who was here in Louisville at the time.

Q. What did you receive from him?

Testimony of Robert H. Laughlin

A. I received a quantity of money.

Q. Did you examine and record the serial numbers of that money?

A. I did.

Q. I show you these papers and ask that you tell the jury what they are?

A. These are the work papers that I prepared at that time listing the serial numbers of the bills that were turned over to me by Mr. Bugas, totaling \$4687.64.

Q. I show you Government Exhibits Nos. 36, 37
1022 38, 39, 40, 41, and 35, and ask you if you examined those exhibits?

A. I did.

Q. I will ask you whether or not you compared the Serial Numbers on the currency turned over to you by Mr. Bugas with the serial numbers appearing on government exhibits Nos. 35 through 41?

A. I did.

The Court: Is Mr. Bugas going to testify?

Mr. Brown: Yes, the next witness.

Q. Did you find the serial numbers appearing on the money turned over to you by Mr. Bugas recorded in Government Exhibits 35 through 41?

A. There were some of them in there. There was a total of 466 of the \$5.00-bills that had serial numbers on the bills which were identical with the serial numbers on these government exhibits.

Q. Were they the only ones you found, the \$5.00-bills?

A. Yes, only \$5.00-bills. There was a \$1000-bill; one \$500.00-bill; 7 \$100-bills; three \$20.00-bills; four \$10.00-bills; eleven \$5.00-bills; one \$1.00-bill and \$1.64 in change.

The serial numbers on that money was not on the list

1023 Q. How many \$5.00-bills were turned over to you by Mr. Bugas?

A. 477 altogether, 466 of that number were identical with the bills listed in the list.

Q. I will ask you to file your work papers which you have identified with your evidence as Government Exhibit No. 76.

Mr. Hogan: That is objected to until further qualified.

Testimony of Robert H. Laughlin

The Court: Objection sustained unless Mr. Bugas connects it up in some way.

Mr. Inman: As to the work papers?

The Court: Unless Mr. Bugas links it up.

Mr. Inman: We will do that.

Q. When were those work papers made?

A. The 13th and 14th of May 1934.

Q. Made by you?

A. Yes.

Q. Where did you get the information obtained in those work papers?

A. By getting it from the money and copying it down.

Mr. Hogan: I will reserve my further objection until Mr. Bugas testifies.

1024 Cross-examination by Mr. Hogan.

Q. Mr. Laughlin, you do not know where this money came from that you listed?

A. It came to me from Mr. Bugas.

Q. I mean, you do not know from what source he got it?

The Court: Of your own knowledge?

A. I did not see him get it any place.

Q. That's what I mean. You do not know in other words?

A. That is right.

JOHN S. BUGAS, was called as a witness by the government and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name?

A. John S. Bugas.

Q. Where do you live?

A. 415 Burns Drive, The Whittier Apartment Hotel, Detroit, Michigan.

Q. Where are you employed?

1025 A. Detroit, Michigan.

Testimony of John S. Bugas

Q. By whom?

A. The Federal Bureau of Investigation.

Q. In what capacity?

A. Special Agent in Charge.

Q. In charge of the Detroit Office?

A. Of the Detroit Office of the FBI, yes, sir.

Q. How long have you been a Special Agent?

A. Since March 1935.

Q. In May 1936 where were you assigned?

A. To the Los Angeles, California, Field Division of the FBI.

Q. And on May 11, 1936, did you have any special assignment? Were you at that time in charge of that office?

A. On that date I was Acting Agent in Charge of the Los Angeles Division.

Q. I will ask you whether or not on that day you went to 510 Cavanaugh Street, Glendale, California?

A. Yes, sir; I did.

Q. About what time did you arrive at 510 Cavanaugh Street?

A. Between 5:30 and 6:00 p. m. on that date.

Q. Who was with you on that occasion?

A. There were six other Special Agents of the
1026 FBI assigned to the Los Angeles Field Division.

Q. Can you describe those premises?

A. The address, the house at the address, 510 Cavanaugh Road, was from the street a bungalow, although in the rear it was a two-story building because the ground sloped to the rear. There was one house between it and the corner from which you arrived at 510 Cavanaugh Road. The house had five or six rooms in it. The house itself was sitting back about 25 feet from the sidewalk. It had a front door, a rather wide, oak panel front door and in that oak front door was a small door about a foot square, probably a foot high and about 18 inches wide that opened to the inside. The oak panel door also opened to the inside. It was a stucco building.

Q. When you arrived at 510 Cavanaugh Road, what did you do with the other Special Agents?

Testimony of John S. Bugas

A. I placed three of them in the rear of the house in order that they could watch the rear and the two sides from the rear; and I left two of the agents in front of the house so they could watch the front of the house and the two sides from the front, and then I and another Agent went to the front door.

Q. Who went with you to the front door?

A. Special Agent E. K. Merritt.

1027 Q. When you and Special Agent Merritt went to the front door, what did you do?

A. When we arrived at the front door, I placed Special Agent Merritt to the side of the doorway just around the corner so he could not be readily seen by anyone coming to the door in order in my mind to subdue suspicion if anyone did come to the front door.

Q. How were you dressed?

A. I was dressed in ordinary street clothes except I had attempted to simulate the appearance of a casual passer-by. I had taken off my coat and necktie and undone my collar and rolled up my sleeves as I went up to the front door.

Q. Did you knock or ring the bell, or what did you do?

A. I first tried the door quietly and it was locked. I then pressed the bell.

Q. Did anyone answer that bell?

A. After a brief pause of a few seconds or a half a minute a man came to the door and he did not open the large door but he opened the small door that I have described to you. It opened inwardly and this man appeared and looked out.

Q. Did you recognize that man?

1028 A. Yes, sir.

Q. Who was he?

A. Tom Robinson.

Q. This defendant?

A. Yes, sir.

Q. What did he say?

A. He asked me what I wanted, and I asked him if Capt. Ernie Smith lived there.

Q. Why did you choose that name?

Testimony of John S. Bugas

A. By a perusal of the city directory there had some-time recently, fairly recently as I recall, lived a Captain Smith at that address and I had that name in my mind when I went to the door.

Q. When you asked him if Capt. Smith lived there, what did he say?

A. He said "no, but maybe I can find out for you. I will look in the phone book." And he withdrew from the door.

Q. What happened then?

A. I then nodded to the Agent who was just out of sight of the door and I nodded to him indicating that it was he, and I also whispered "It is Robinson." Then this Agent got his pistol in readiness, took it out of his holster, and we watched for Robinson to return which he
1029 did in a moment or so.

Q. When he came back did he then open the big door?

A. Not at that moment. He said he could not find Smith's name in the telephone book but suggested that I might be able to find the number of his address if I would see a Miss or Mrs. Spencer from whom he had rented the house and during that conversation the Agent with me, Merritt, by that time being sure that it was Robinson, jumped in front of the large door and put his left hand through the small door and grasped Robinson's hand which was on the door and with his right hand put the pistol in Robinson's face and Robinson was instructed to open the big door immediately in the name of the law.

Q. Did he open the big door?

A. He did, immediately.

Q. Did you then take Robinson in your custody?

A. We then took Robinson in custody and brought him outside immediately—outside that door. We pulled him out on to the lawn, in other words.

Q. And on the lawn what conversation did you have with him?

A. The first thing I said to him was, "What is your name?" And to that he said—

Mr. Hogan (Interrupting): I object to that.

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1030 Mr. Brown: In view of the other ruling we had perhaps better omit the conversation. Of course I want it definitely understood that I intended to recall Mr. Bugas--

The Court (Interrupting): Do you want to make an avowal as to what the witness would say?

Mr. Brown: I think so.

At this point the following avowal was made out of the hearing of the jury:

Mr. Inman: If permitted to answer the witness would say that Robinson replied, "You know who I am," and after a moment's pause he said, "I am Tom Robinson."

The following proceedings were then had in the hearing of the jury:

Direct Examination Continued by Mr. Inman.

Q. Did you search Tom Robinson on the lawn of that home?

A. We made a quick search of him at that time. It took just a few moments.

Q. What did you find?

A. The principal thing we found at that time was a 45 automatic revolver in his pocket, fully loaded with a load in the barrel.

1031 Q. In which pocket did you find that?

A. In the right front pocket.

Q. What did you then do with Robinson?

A. We took him to the automobile where the two Agents who had stayed in the front of the house were and left him in their custody in that automobile and then this Agent and I returned to the house in order to see if anyone was in the house--anyone in addition to Robinson.

Q. Was anyone else in that house?

A. No.

Q. What did you then do with Robinson when you found no one else was in the house?

A. We went back out to the house and brought Robinson back in and the three Agents who were in the rear of the house and the two Agents who were in the car.

Q. At that time did you make a thorough search of

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Robinson?

A. At that time we made a thorough search of Robinson in the front room of this house.

Q. Did you find any money?

A. Yes.

Q. What amount of money did you find on Robinson?

A. We found on his person a sum of money totaling \$2357.64.

Q. Where was that money?

1032 A. It was in his pockets. In the pockets of his trousers.

Q. Did you make a search of the house?

A. At that time, prior to my departure from the house from the time I arrived there, we made a cursory search of the house and after we made a cursory search of the house I left, together with 2 Agents and Robinson and left the other Agents to make a thorough search of the house.

Q. During the time you were there, during the time the cursory search was made, was a strong box found?

A. Yes, sir.

Q. Describe that to the Jury?

A. A strong box was found by myself in a hallway leading back from the dining room in the rear of the house in a small cedar-lined closet in that hallway, which was 12 by 15 by about 7 or 8 inches deep. It was a dull red finish on the outside and it had a lock on it.

Q. Was it locked?

A. Yes.

Q. Did you find a key to that box?

A. Yes, sir.

Q. Where was the key?

A. The key was among the effects in Robinson's pockets, by that time having been strewn on the divan in the front room.

1033 Q. Did you open that box?

A. Yes.

Q. What did you find in it?

A. We found several packages of \$5.00-bills, all of which, as I recall, was in what appeared to be original

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bank wrappers.

Q. Was the name of the bank on those wrappers?

A. Not that I recall, no.

Q. How much money did you find in that box?

A. \$2330.00.

Q. All in \$5.00-bills?

A. Yes.

Q. Making a total of how much money found?

A. \$4687.64.

Q. What did you then do with Robinson?

A. We completed a search of the house, prior to doing anything with him, however, and found some other things in the house.

Q. What did you find?

A. I found a 12 gauge shotgun fully loaded with a shell in the barrel standing to the right of the door that we had come in. Two 45-automatic pistols in his dresser drawers of the bed room to the left of the large sitting room where we entered, and a 38 Harrington and Richardson revolver on the top of the dresser in his bed
1034 room and a quantity of ammunition fitting all of the guns with some extra clips, and cleaning apparatus, oil and rods, etc.

Q. Was the 38 revolver fully loaded?

A. Yes.

Q. Did you find any holster there?

A. We found one holster there for the 38 Harrington and Richardson.

Q. What did you then do with Robinson?

A. After the cursory search was completed I and four of the other six Agents and Robinson returned to the Los Angeles field office of the FBI in downtown Los Angeles in the two automobiles we had gone out there in.

Q. What did you do with the money you had found there? That is, did you take it with you?

A. I took it with me.

Q. In your custody?

A. In my possession; yes, sir.

Q. Then what did you do?

A. At the office, in my presence, I caused on the desk

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in front of me another count to be made of this money, the count at the house having been rather rapid and I also caused a spot check to be made on the serial numbers on the bills on the 5's, 10's and 20's with the serial numbers on the ransom list that had been circulated throughout the country. After that had been done, I chartered an airplane on the TWA airlines to go from Los Angeles to Louisville.

Q. Did you take that plane?

A. We took that plane out about 9:30 p. m. that night.

Q. Who did you have with you?

A. Robinson, Special Agent H. H. McKeey, Special Agent Leckie, Special Agent E. K. Merritt and myself.

Q. What time did you arrive in Louisville.

A. At about 11:15 a. m. the morning of May 12th.

Q. That was in 1936?

A. Yes, sir.

Q. At that time did you have with you the money you had taken from Robinson and from the strong box?

A. Yes, sir, that money had never left my possession and I took it with me to the plane and on the plane to Louisville.

Q. When you landed in Louisville, where did you go?

A. From the field, the air field, Bowman Field we went immediately to the FBI office at Louisville which at that time was in the Starks Building.

Q. Did you have the money with you?

A. I did, yes, sir.

1036 Q. On the 12th of May where was that money placed?

A. On the 12th of May after my arrival at the office it was placed in the safe of the field office in the Starks Building on the 7th floor, the money reposing in a locked brief bag to which I had the key, and which I had brought with me.

Q. On the following day did you remove that money from the safe?

A. I did, yes, sir.

Q. And to whom did you deliver it?

A. I delivered it to Special Agent Robert Laughlin

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who at that time was attached to the Louisville Field Office.

(Exhibit No. 76 which was identified in the testimony of Mr. Laughlin was handed to the Reporter and filed.)

1037 Q. I'll show you Government Exhibit 58, Mr. Bugas, a photograph, and ask you if you recognize the photograph.

A. Yes, sir, I do.

Q. Who is it?

A. It is the photograph of a woman whom I knew as—by various names, whose correct name is Jean Breese, but whom I knew as Jane Hughes, Jean Gordon, Mrs. Leslie K. Burgess and Mrs. John Phillips.

Mr. Hogan: Your Honor, he says he knows her. Did you know her personally?

The Witness: Personally?

Mr. Hogan: Yes.

The Witness: Yes, sir.

Mr. Hogan: Did you know her by those various names?

The Witness: I did. I had her—yes, sir, I did.

Mr. Hogan: Before this, I mean.

The Witness: Oh, yes.

Mr. Hogan: You knew her personally, now.

The Witness: Personally, yes, indeed, very well.

Mr. Hogan: Before this May 11th, I am speaking of, 1936.

The Witness: Not before that date. I thought you meant before today, sir.

1038 Mr. Hogan: He is testifying about the photograph of a woman that he knew by certain names. I certainly object to that.

The Court: I don't think it makes any difference when he knows the woman, if he can identify the photograph and the woman.

Mr. Hogan: He said he knew her then as those names.

The Court: I don't know when he knew her.

The Witness: I said, whom I knew by those names. I

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didn't specify as to the date, I don't believe.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. How did you know the whereabouts of Robinson, Mr. Bugas?

A. Jean Breese told me her whereabouts—told me his whereabouts, beg your pardon.

Q. How many meetings with her had you had before you went to this address where you say you found him?

A. Personal meetings or all types, sir?

Q. All types.

A. I had one telephone communication with her and one personal meeting.

Q. Did she come to your office at this personal
1039 meeting?

A. No, sir.

Q. Arranged a meeting with you elsewhere?

A. By telephone; yes, sir.

Q. And did you meet her?

A. Yes, sir.

Q. Where?

A. On the mezzanine floor of the Los Angeles Biltmore Hotel, Los Angeles, California.

Q. Up to the time you had the meeting with her, you did not know the whereabouts of Robinson, did you?

A. No, sir.

Q. Nor did any of the other agents of the F.B.I.?

A. No, sir. To my knowledge, no.

Q. This was on May 11th, 1936?

A. Yes, sir.

Q. How many agents did the F.B.I. have as of that date and prior thereto?

A. I could give you an estimate.

Q. Just estimate it.

Mr. Brown: You mean all over the United States or just in Los Angeles.

Mr. Hogan: All over the United States.

A. My guess would be about between five and six hundred.

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1040 Q. What is the number of months counted between October 10th, 1934, and May 11th, 1936?

The Court: I believe anybody can count up as well as the witness.

A. I would have to do a little rapid calculation.

The Court: A little less than two years, isn't it?

A. About eighteen months.

Q. Did this Jean Breese make any arrangement or deal with you upon the surrender or giving you information as to Robinson's whereabouts?

A. Well, that's a little difficult to answer, sir. I can tell you the details.

Q. Under what circumstances did she divulge his whereabouts?

A. Well, she phoned at about 10:00 o'clock that morning, the morning of May 11th, and asked me to meet her at 2:00 o'clock that afternoon at the designated place, which I did with another agent, and after about three quarters of an hour conversation she left the meeting without having told me where he was, but saying that if she were convinced on leaving that meeting that she were not being followed by special agents, she would phone me about 4:00 o'clock and tell me his whereabouts. Now

that's about the extent of the arrangements that we **1041** made, sir, as I recall them. I believe she did also say in line with the arrangements, that she would desire, if possible, very much that he be arrested without any harm coming to him or to the agents. She was particularly concerned about him.

Q. Did you find out from her that she had at any time known where Robinson was or had been with him?

A. Yes, sir.

Q. Did she tell you for what period of time that she might have been with him?

A. Yes, sir; she did.

Q. And what period of time did she say?

Mr. Brown: I think we are going right far afield. That's purely hearsay, has nothing to do with this case.

The Court: I think, if it is designed to test the credibility of the witness in any way, probably it can be used. Of

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course, Mr. Hogan, you understand you are waiving the hearsay rule when you are asking these questions. What the witness tells with reference to hearsay statements is made admissible by asking the questions.

Mr. Hogan: I am fully aware of that, Your Honor please. I am doing it with my eyes wide open, so to speak.

The Witness: May I answer, Your Honor?

The Court: Yes.

The Witness: Would you read the question, please?

1042 Question read by the reporter, as follows:

"And what period of time did she say?"

A. She told me that she had been with him for about fifteen months, since around January 1st, 1935.

Mr. Hogan: Your Honor please, that's as far as I care to pursue the questioning as to the time this witness admitted she had been with this defendant.

Mr. Brown: I don't understand what he means.

Mr. Hogan: I mean the person, Jean Breese.

Q. Did you have with you there an agent named Meiersen?

A. Yes, sir. Did I have him where, sir?

Q. Attached to your office.

A. Oh, yes. Yes, sir.

Q. Did he talk at the same time as you did with Jean Breese?

A. At the Biltmore Hotel?

Q. Yes.

A. Yes, sir, he was with me, the two of us.

Q. I will ask you if you do not recall, Mr. Bugas, that Jean Breese told you that Robinson, Jr., Thomas H. Robinson, Jr., had been legally adjudicated insane.

Mr. Brown: Your Honor, I am going to object to that, on this ground, in this case, at this point. I certainly was prevented from going into other matters.

1043 The Court: That's purely hearsay, isn't it, Mr. Hogan?

Mr. Hogan: It is a question whether or not certain words were said to him.

Mr. Brown: That's pure hearsay.

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The Court: It is pure hearsay. I think the Government is entitled to invoke the rule as to hearsay the same as you have. You have invoked it several times during the trial.

Q. Did you have any information or knowledge, yourself, that Robinson had been adjudicated as an insane person?

A. Now at what time, sir?

Q. Prior to the time that you went out to the house where you said he was.

A. No, I did not.

Q. You deny specifically that you had any such knowledge or information?

Mr. Brown: No, not information.

The Court: Information again would be hearsay, Mr. Hogan.

Mr. Hogan: In other words, the court rules that he cannot detail anything that he has from information?

The Court: He is not going to be allowed to testify to hearsay statements which would, as I gather, **1044** come from hearsay sources. He said he didn't know himself, didn't have any information first-hand.

Q. What deal did you make with Jean Breese to surrender Robinson?

A. Well, sir, I have outlined to you, in effect, our conversation at that time. There was, as I recall it, no deal at all made. I am positive that there wasn't.

Q. Wasn't a deal made that if she would divulge the information that he would be taken and put in an insane asylum?

A. Emphatically no.

Q. Are you sure about that?

A. Oh, positive, sir.

Q. Was the word "insane" brought up or insanity or condition of this man's mind brought up before you went to that address?

A. In our conversation with Jean Breese, now, at the Biltmore Hotel, is that what you are referring to?

Q. Yes.

A. No, sir, it was not.

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Q. Did you have any other conversation after you had placed him in charge, about his insanity?

Mr. Brown: With whom?

Mr. Hogan: With Jean Breese.

A. Did I have any other conversation with her?

1045 Q. Yes.

A. Yes, sir, I did. After he had been taken into custody, you mean?

Q. Yes.

A. Yes, sir.

Q. About his insanity.

A. I beg your pardon, no, I have not.

Q. You knew that she claimed to have been with this man for some fifteen months, I believe, you stated.

A. Yes, sir.

Q. Did you place any charge against her or place her under arrest?

A. Did I place any charge against her?

Q. Yes.

A. No, sir.

Q. Did the F.B.I.?

Mr. Brown: That certainly is not a function of the F.B.I. at all. It is a function of the United States Attorney's office.

Mr. Hogan: You maintain it was not the function of this man to arrest Robinson?

Mr. Brown: I didn't say that.

The Court: The District Attorney is saying it is not the function of the F.B.I. to file proceedings. That's what you asked, did you not?

1046 Mr. Hogan: No, I didn't.

The Court: Yes, you did, you said place charges.

Q. Did you arrest Jean Breese?

A. No, sir.

Q. But you did arrest Tom Robinson, Jr.

A. Yes, sir.

Q. Has Jean Breese ever been arrested in connection with this matter?

The Court: The witness will speak from his own knowledge.

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Mr. Hogan: That's right.

A. To my knowledge, no, sir.

Q. You did not arrest her, though you knew she claimed to have been with him for some fifteen months.

Mr. Brown: I am going to object to that again because, as I say, it is not the function of the F.B.I. to arrest anybody unless the District Attorney authorizes it.

The Court: I think counsel can agree that the F.B.I. is involved with offenses against the Federal Government and not the state government. Isn't that a fair statement?

Mr. Hogan: And I think harboring a fugitive, if she was, is an offense against the United States Government.

The Court: The witness can answer. I think he said he did not. He has answered twice, now.

1047 A. Will you read the question again, please, I don't recall what it was.

Question read by the reporter, as follows:

"Has Jean Breese ever been arrested in connection with this matter?"

A. I did not arrest her; no, sir.

Q. Did any other F.B.I. agent arrest her?

A. I can only speak from my own knowledge. To my knowledge, no.

Q. During this eighteen month period of time, the whole six hundred, or whatever number, F.B.I. agents were unable to locate Thomas H. Robinson, Jr., is that correct?

The Court: Now this witness can only speak for himself, can't he? During that time he didn't locate her.

Mr. Hogan: Yes.

A. That's correct, sir, I did not.

Q. How far was he located from your office there in Los Angeles?

A. It was about an hour's drive from Los Angeles out to where we arrested him, about twenty miles.

Q. What town or village was this residence located?

A. In Glendale, California.

Q. How many agents were assigned to the Los Angeles office?

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1048 A. I don't recall that exactly, and that would have to be a guess, if you desire that.

Q. Give us a guess on that.

A. There were about twenty agents.

Q. You and your office were looking for this man, were you not?

A. I can only answer that in this way, if you will permit me.

Q. Yes, sir.

A. Every office and every agent in the Bureau is always vigilant to locate everyone who is a fugitive or against whom process is outstanding who has not been apprehended, and inasmuch as Robinson was in that status at that time we, of course, were anxious to locate him and would run out every lead that we could develop that might enable us to take him into custody.

Q. How was Robinson dressed when you found him at this residence?

A. When he came to the door, do you mean?

Q. Yes.

A. He had on a light shirt, a white shirt, as I recall, no tie, no hat, and a pair of trousers, and shoes. The color of the trousers—

Q. That is not important.

A. I don't recall, except it was some neutral color.

1049 Q. Was he disguised in any manner?

A. No, sir.

Q. Had a moustache, didn't he?

A. Yes, he did.

Q. Wasn't dressed as a woman was he?

A. No, sir.

Q. I believe you and these other three agents, McKee, Leckie and Merritt, came with Robinson in an airplane leaving Los Angeles about 9:00 p. m. on May 11th, is that correct?

A. Yes, sir.

Q. You arrived in Louisville what time?

A. At about 11:15 a. m. on May 12th.

Q. And then you took him from Bowman Field, air-

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port here in Louisville, Kentucky, or just outside the city, to the seventh floor office of the F.B.I., located in the Starks Building of this city.

A. Yes, sir.

Q. And you were with him most of that time, or all of that time?

A. Yes, sir. You mean, now, up to the time that we took him to the office?

Q. Yes.

A. Yes, sir.

Q. And after you took him to the office, did you
1050 stay with him?

A. Fairly continuously the remainder of that day, up until about 9:00 or 10:00 o'clock that night.

Q. Was he brought to this court and arraigned on May 12th?

A. No, sir.

Q. He was kept confined in the F.B.I. office in the Starks Building, was he not?

A. He was kept in the F.B.I. office that day up until the time I left, which was around 9:00 or 10:00 o'clock, yes, sir.

Q. Was he arraigned on the morning of May 13th, 1936, which would have been the second morning?

The Court: This witness wasn't here, was he?

The Witness: On the 13th?

The Court: Yes.

The Witness: Yes, sir.

The Court: I thought you said you left.

The Witness: No, I left the office, Your Honor.

A. The question again, please?

Question read by the reporter, as follows:

"Was he arraigned on the morning of May 13th, 1936, which would have been the second morning?"

A. To my knowledge, no, sir.

Q. He was not arraigned until sometime around
1051 6:00 p. m. of May 13th, 1936, was he?

A. I saw him arraigned at about that time on

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the 13th, yes, sir.

Q. He was brought here in this very court room in shackles, was he not?

A. I don't recall whether it was this court room or the other one, sir.

Q. Whichever one it was, he was shackled, in chains?

A. As I recall, he was handcuffed. I do not recall the shackles.

Q. During the time that he was in the Starks Building of the F.B.I., was it brought to your attention or to the other agents, that this man had previously been insane?

Mr. Brown: I certainly don't mind brought to his attention. I don't know that it would help him. It is not a question of his attention. It is the question of what knowledge he has.

The Court: That would be hearsay again, wouldn't it, Mr. Hogan?

Mr. Hogan: In the form of it, unless he knew that they had examined the records.

The Court: This witness can only get his information from someone else, and, of course, that is not the best evidence. We have stuck to the hearsay rule all the way through. You have invoked it.

1052 Mr. Hogan: I believe that's all.

Mr. Brown: That's all.

Mr. Hogan: That's all, Mr. Bugas.

The Court: Is that all, Mr. Brown?

Mr. Brown: Your Honor, I might state at this time, I think that's the Government case, but I understand from Your Honor that you are not going to hold court this afternoon, so I would appreciate it if you would allow me formally to indicate my intention to close Monday morning. We have gone here a week and I want to review in my own mind the evidence.

The Court: Let me see counsel here a minute.

Mr. Hogan: Before we do that, if Your Honor please, there is an objection I want to make, and that is to the testimony of Mr. Laughlin, and I understood that his testimony was contingent upon being connected up by Mr. Bugas. The basis of my objection as to Mr. Laughlin is that

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he did not testify that those entries that he made upon some sheets were made in the usual and regular course of business.

The Court: He testified they were made by himself, didn't he?

Mr. Hogan: Yes, but not as an F.B.I. agent or any other officer of the Government.

The Court: Objection overruled.

Mr. Hogan: Exception.

1053 The Court: Members of the jury, we will go on the assumption for the time-being, at least, that that will complete the Government's case. Upon review of what the Government has put in, the Government may have a witness or two, but probably not. Accordingly, the next step in the case in the way of evidence would be to go ahead with the defendant's evidence, which we will delay until Monday morning. That means, we will not have any afternoon session this afternoon. Counsel on both sides can take the recess for an opportunity of reviewing their records and doing necessary work that they might do between now and Monday.

I want to caution all of you, however, over this Saturday afternoon and Sunday recess, not to discuss this matter among yourselves or with anyone, or permit anyone to talk to you about it in any way or in your presence. The case is, of course, not completed. You have only heard one side so far. You are not to make up your mind or make up any decision or discuss the aspects of the case at all with each other until all the evidence is in on both sides, and you have heard the arguments and the court's instructions. Accordingly, you shall not discuss it nor form any opinion at the present time, of the case. Keep an open mind on it until the evidence is all concluded, and, of course, until we start again on Monday morning.

1054 Probably some of you, maybe all of you, I hope, would like to go to church tomorrow. If so, the marshal and the bailiff will be prepared to take you in groups at different times to the different churches. I do not think it will be possible for you all to go to separate churches, but maybe you all can break the groups up into

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numbers where you can agree to go in small groups at different times, so that all of you can have your opportunity to spend Sunday as you usually do.

Any further suggestions of counsel for either side?

Mr. Brown: Nothing, Your Honor.

Mr. Hogan: Nothing from us.

The Court: Remember the admonition of the court with respect to talking or discussing the case.

Mr. Marshal, will you adjourn court?

An adjournment was taken to Monday, December 6, 1943, at 9:30 o'clock a. m.

1055 Convened Monday morning at 9:30 a. m., December 6, 1943, pursuant to adjournment and continued with the following proceedings:

Mr. Hogan: If Your Honor please—

The Court: Just a moment. I think we have a statement from the Government first.

Mr. Brown: The Government rests.

The Court: The Government rests, all right.

Mr. Hogan: If Your Honor please, at this time I have a motion on behalf of the defendant to exclude a number of exhibits mentioned in the motion—there are a number of them, so I will not take time to designate them by numbers—and it is based upon this statement or upon this cause of objection. The Government put witness Knowles on the stand out of order, that is to say, they put him on for the purpose of identifying certain finger-prints and qualified him as a finger-print expert. They proposed and promised the Court that they would connect his testimony up with the testimony of witness Richard E. Smith who was delayed reaching the Court by reason of train facilities.

Witness Knowle or Knowles took the exhibits that had been offered in evidence, consisting among other things, the ransom note, letters, letter to Mr. Berry Stoll, letter to Miss McHenry, letter to the Custodian, envelope to the Custodian, envelope in connection with those other

1056 letters, and he also connected up finger-prints or identified finger-prints upon the telephone box, I believe; in other words all the finger-prints that were submitted to him, he made a comparison with the known or

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genuine specimen of the finger-prints of Thomas H. Robinson, Jr., and upon the witness stand, when he was asked if he prepared those, he said he did, he was asked whose finger-prints they were and he said "Thomas H. Robinson," not "Junior," not "Senior," but simply "Thomas H. Robinson." Mr. Brown at one time in the questioning asked him, "Could those finger-prints have been made by any other person?" or question to that effect, and he said "No," of his testimony was that they could not have been made by any other person than Thomas H. Robinson—not Thomas H. Robinson, Sr., not Thomas H. Robinson, Jr., merely and simply Thomas H. Robinson.

That is significant in this case because the indictment in this case, which was drawn in 1934, accused Thomas H. Robinson, Sr. and Thomas H. Robinson, Jr., father and son, of the commission of the crime set out in this indictment. In other words, the father and the son were both accused in the same indictment.

Now the father was tried in this court, and, of course, he was acquitted upon those charges. That left the defendant, Thomas H. Robinson, Jr., charged in the indictment, and they have not connected up the finger-
1057 prints of this defendant with any letter or telephone box, or anything that has been testified or identified by the witness Knowles, and I think that that is important in view of the fact that both father and son were named in the same indictment.

The Court: Let the motion be filed. That's the motion that we have just discussed for the last thirty or forty minutes in chambers and on which your argument has been more at length than it was right now when you have stated your reason in detail. In view of the evidence shown that the known finger-prints which were made by the witness Smith were the finger-prints of the defendant, Thomas H. Robinson, Jr., he said that it was shown to be of Robinson, Jr., the witness Knowles was comparing the finger-prints as presented to him with the finger-prints of Robinson, Jr., and his testimony I think fairly and reasonably to have been with reference to the known finger-prints of Robinson, Jr., and the statements are accordingly

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taken in that light. He had no other finger-prints that he was making comparisons with.

However, as I indicated to you, I don't think that the motion is properly made at the right time, rather, it might be made now, but there is no necessity for it to be passed on until the close of all the evidence, and if a connection is made the motion may be academic at the close of all the evidence. Its only purpose at this time would be to

1058 remove that evidence from the record for the purpose of considering any motion by the defendant to dismiss at this time, which I understand will probably be made, and even if such evidence be considered as not before the Court in considering your motion to dismiss, which I understand is to be made, as I have heretofore indicated in chambers it doesn't affect the picture in any material extent. Accordingly, your ruling to strike the evidence as indicated in that motion will not be passed on at the present time. The ruling is reserved until all the evidence is given.

Any further motions?

Mr. Hogan: Your Honor please, at this time, then, I ask the Court and move the Court for an order of a directed verdict or an order of dismissal of this defendant and of this indictment and the charges against him. If you want me to briefly outline my reasons, I will do so.

The Court: Probably for the purposes of the record you should do so. You have done so somewhat at length in chambers.

Mr. Brown: I think it should be done either in chambers or outside the presence of the jury.

The Court: Yes, I believe you are right in that respect. I believe we can handle that later, in which you can put your motions to the stenographer, the reasons for your motions, a little later when the jury is excused.

1059 You have already outlined them to me in detail and

I understand they will be the same, and, therefore, there is nothing to be presented to me by your statement at the present time that I have not already had presented. With the understanding then, that you will complete the

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record later by giving the reasons that you gave to me in chambers, let the motion be overruled. Exception to the defendant.

THOMAS H. ROBINSON, JR. called in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

The Court: Before this defendant testifies, Mr. Hogan, do you wish to make any opening statement to the jury?

Mr. Hogan: If Your Honor please, in the interest of time, I believe I will forego that formality and let the case proceed without the requirement or without my making any opening statement.

The Court: Has this defendant been advised of his rights?

Mr. Hogan: He has been, and I will have him state in open court if he is willing to have that right waived.

The Witness: Yes, I am, Your Honor.

1060 Q. What is your name?

A. Thomas Henry Robinson, Jr.

Q. How old are you, Tom?

A. Thirty-six.

Q. Where were you born?

A. Nashville, Tennessee.

Q. When were you born?

A. May 5th, 1907.

Q. Where were you raised as a boy and young man?

A. In Nashville, Tennessee.

Q. Who was your father?

A. Thomas Henry Robinson, Sr.

Q. Who was your mother? Who is your mother?

A. Mrs. Jessie P. Robinson.

Mr. Hogan: If Your Honor please, I would like at this time—I don't know whether there are any witnesses in the court room who have been subpoenaed, who may be called in rebuttal, I would like to find that out.

The Court: If there are any witnesses in the court

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room for either the Government or the defendant, please retire to the hall and remain until you are called. Mr. Marshal, see that no witnesses get in the court room. Is the Marshal at the door?

The Marshal: Yes.

Q. What education have you had, Tom?

1061 A. Grade school and preparatory school, three years at college.

Q. Now, what grade school did you attend?

A. The Ross School, in Nashville.

Q. Did you complete that educational training?

A. I think I did, yes.

Q. What was your next scholastic training?

A. Wallace Preparatory School.

Q. How many years did you attend Wallace Preparatory School?

A. Three years. However, I had made up one year in the summer and I think I finished that training.

Q. Did you complete your course of education at Wallace Preparatory School?

A. I think that I lacked one subject of completing that.

Q. You did not graduate from that school, then.

A. No, I didn't receive a diploma from Wallace.

Q. And where is Wallace Preparatory School located?

A. That's in Nashville, Tennessee.

Q. What other school did you attend or schools after leaving Wallace Preparatory School?

A. Vanderbilt University.

Q. How long did you attend Vanderbilt?

A. For a period of about two and a half years.

1062 Q. And where is Vanderbilt located?

A. That's in Nashville, Tennessee.

Q. What type of studies or course of studies did you pursue at Vanderbilt University?

A. I studied law.

Q. Did you complete the law course?

A. No. I lacked about two or three subjects of completing it.

Q. Did you have any childrea's disease?

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A. Oh, the normal run of children's disease, I think I had most of them, yes.

Q. Will you, for the purpose of the record and for the purpose of the jury, tell what those were?

A. Well, measles, mumps, chicken-pox, later on I had malaria.

Q. Now, in reference to the malaria, did you have that in a mild or an aggravated form?

A. Very aggravated form, I would say.

Q. Will you please elaborate on that a little bit?

A. Well, it necessitated quite a bit of medical treatment, I know I had high fever, took shots of quinine, intermuscularly, and it left me in a very weakened condition when it was over, in fact I came very near dying I think at the time.

Q. At what age were you when you had this
1063 malarial trouble?

A. I would say about fourteen.

Q. Were you then living in your home city of Nashville, Tennessee?

A. Yes, I was.

Q. Following that malarial trouble, may I ask you this—how long were you troubled and were you treated for this malarial disease?

A. I would say over a period of a month or two.

Q. Were you required to miss any school by reason of that trouble?

A. Yes, I did. I miss schooling for that year.

Q. What was that answer?

A. I said, I missed my schooling for that year.

Q. Did the malaria leave you in a weakened condition physically?

A. Yes. I think it eventually led to development of tuberculosis.

Q. Now, what other trouble, if any, did you have following your malarial disease?

A. I developed tuberculosis.

Q. Before you had the tuberculosis, did you have any other trouble, lung trouble?

A. I had pneumonia, developed pneumonia and pleu-

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risily before I developed the tuberculosis.

1064 Q. What was your age when you developed the pneumonia and pleurisy?

A. I would say between the ages of fourteen and fifteen.

Q. How long were you troubled with pneumonia and pleurisy?

A. At least a period of a month.

Q. Were you seriously ill or just mildly ill with the pneumonia and pleurisy?

A. I was very seriously ill with it.

Q. Did you require the attendance of physicians?

A. I did.

Q. Over that period?

A. Yes.

Q. Did those conditions leave your physical health impaired in any way?

A. Very much. It was at that time that I developed the tuberculosis in both lungs.

Q. Did you receive any treatment for your tuberculosis?

A. Yes. I was admitted to the Davidson County Tuberculosis Sanitarium for a period of about a year.

Q. Is that in the State of Tennessee?

A. Yes, in Tennessee.

Q. Received treatment during that period, I take it.

1065 A. Yes, I did.

Q. Was your tuberculosis an aggravated or a mild case?

A. I think it was more or less mild. I had spots on both of my lungs, but never really severe.

Q. Did you have any other injury or lick upon your head during your childhood? I mean, not any other, but did you have any injury or lick on your head during childhood?

Mr. Brown: I am going to object on that. I think we have very serious objections on the point of leading questions.

Q. Did you sustain any injuries during your child-

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hood?

A. Yes. When I was approximately eleven years old and I was on my Uncle's farm in Ohio, I was kicked by a horse very severely, the right cheek.

Q. When you say severely, will you please elaborate on that?

A. Well, I was knocked unconscious, my left eye—right eye was closed for a period of two weeks. My cheek bone was swollen for a long time thereafter, probably still is.

Q. Did that kick by that animal leave any scar on your face?

A. No, I don't recall that it left any scar at the present time. It probably did at that time.

Q. Did it impair in any way the bony structure of your face or head?

A. It did, with my antrum, which is the upper part of the cheek bone, as I understand it.

Q. After you spent this time in the tuberculosis sanitarium of Davidson County, what next did you do?

A. Why, I again resumed my studies in high school at that time.

Q. During the time that you were in this tuberculosis sanitarium, did you miss school?

A. Yes, I did. However, during that period I think I managed to make up what was the equivalent of one year, first year of high school.

Q. After you got out of the tuberculosis place and you resumed your studies, at what school or schools?

A. That was the Wallace Preparatory School.

Q. And you did not, as you said a moment ago, graduate from the Wallace Preparatory School?

A. No; I think I lacked one subject of completing that.

Q. What did you do following the termination of your schooling at Wallace Preparatory School?

A. I entered Vanderbilt University, and started to enter the academic school, and didn't have sufficient credits and I was able to enter the law school as a special student.

Q. Well were you not able to enter as a regular student because of your not completing the Wallace Preparatory

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School?

A. That's correct.

Q. Well now tell the jury about your studies during the time you spent at Vanderbilt in pursuance of your scholastic course?

A. Well I think I possibly completed about a year and a half of my studies in law school, and at that time I was forced into a marriage against my will, and—

Q. (Interrupting) Now wait just a minute before you come to that. Prior to that forced marriage you have just mentioned, did you associate yourself with other young folks of Vanderbilt and around the town of Nashville, Tenn.?

A. Yes, I did. I belonged to two fraternities
1068 at that time. A social fraternity and a legal fraternity; and I went with the usual crowd of boys and girls who were in my school and known to me in my town, Nashville.

Q. Did you travel in what is known as good society or—

A. (Interrupting) I would say very good, yes.

Q. Did you attend dances?

A. Quite frequently.

Q. Were you acquainted with any nationally known vaudeville or radio performer, or who later became such?

A. Yes I was.

Q. Will you tell this jury who he was?

A. James Melton. He was a very close friend of mine.

Q. Who is James Melton?

A. He is quite a prominent singer on the radio and in the movies.

Q. Well were you closely associated with James Melton, or did you just casually know him?

A. Very closely associated with him. He and I dated sisters together. He went with the older sister and I went with the younger sister.

Q. Now had you been pursuing a fairly normal course of life considering your diseases you have mentioned up to the point of this forced marriage?

1069 Mr. Brown: I object to that. Characterized by

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the normal course of life, that calls purely for a conclusion by this defendant. I think he can tell what he did and let the jury come to their own conclusion.

The Court: I believe he has told what he has done. If there is anything further that you want to bring out different from the normal, I think you can do that.

Mr. Hogan: All right, Your Honor. I think Your Honor is probably correct on that—is correct.

Q. How did you get along with your fellow students in Vanderbilt University and the Wallace Preparatory School?

A. I got along very well with all of them. I had a host of friends, and I was well liked by them all, I think.

Q. Did you make good grades or inferior grades in your studies up to the point of your forced marriage?

A. I made very good grades.

Q. Did you live in Nashville at the time you were going to Vanderbilt?

A. Yes.

Q. Did you live at these fraternity houses, or did you live at your own home?

A. I lived at home during that time.

Q. In other words, did you or not live at any
1070 fraternity house?

A. I stayed there quite a bit during the day, but I didn't live there at night, no.

Q. Did you participate actively in the social and other functions of your fraternity?

A. Yes; I did.

Q. Did you participate actively in the school functions?

A. Yes; I think I took a very active part in all the school activities at that time.

Q. Now, you have already mentioned this forced marriage. How old were you when you were forced into what you say was a forced marriage?

A. I would say I was 20 years old.

Q. Well suppose you tell the jury about that forced marriage?

A. Well at that time I was served with a warrant

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charging me with a violation of the age of consent with a girl I had previously been going with and I was threatened with prosecution on that warrant; and I thought it best at the time to marry the girl, which I did.

Q. Now, you say you thought it best. Did you have any other alternative?

A. None other than to face prosecution in violation of the age of consent.

1071 Q. Tell the circumstances of your being presented with this warrant? Who brought the warrant there?

A. Two deputies and the girl and her Uncle and mother, I think, came to my fraternity house in the afternoon and served a warrant on me and the deputies insisted that I marry the girl.

Q. Well, were you given an opportunity to consider the marriage?

A. No I was not. I was not given any opportunity to consult with my father or friends or anyone else. There was no alternative left but to marry her.

Q. Had you known this girl for long?

A. I had known her for a period of less than seven months previous to that.

Q. Well, was she a girl of your social standing?

A. No, I wouldn't say she was. I picked her up as a casual pick-up.

Q. But you did marry the girl?

A. I did marry her.

Q. What happened after your marriage? Did you live with her?

A. No. She went to her home and I went to my home, and she began making demands on my father and mother for a considerable sum of money. I think probably \$5,000 was what she—she wanted to annul the marriage
1072 and my father wouldn't go for that, so he filed suit in my behalf, at least I did thru him, in the Chancery Court for annulment.

Q. Were you of age then?

A. I don't know whether I was 20 or 21 at that time. I rather think I was not quite 21.

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Q. You said you filed suit thru your father. I take it that you were not 21?

A. No; I was not.

Q. What was the outcome or result of that annulment or court action?

Mr. Brown: Well I am going to object to that. The records speak for themselves.

Mr. Hogan: Well he can tell.

Mr. Brown: No he can not.

Mr. Hogan: Well he knows what happened.

The Court: I think the records are the best evidence, Mr. Hogan.

Q. Well were you divorced from this girl?

A. Yes, I was. I might add that three or four days after our marriage she gave birth to a child—a 9-pound 9-months child—

Mr. Brown (Interrupting): Your Honor, I am going to object to that. Obviously this defendant is no doctor.

The Court: Well I suppose the father is usually
1073 acquainted with a child that is born.

Mr. Brown: I will agree with you, assuming he is the father, I will agree with you.

Mr. Hogan: He is charged with being. He certainly ought to know whether it is a nine or seven months child.

The Court: Well, objection overruled.

Q. You may continue about the child?

A. As I said before, the child was a nine months child; weighed 9 pounds, and I had only known the girl 7 months prior to that time by her own admitted statement.

Q. Did she ever make any admission to you as to the real father of that child?

Mr. Brown: Well now I am going to object to that.

The Court: It is purely hearsay, Mr. Hogan.

Q. After this incident and marriage and annulment, did you continue at Vanderbilt?

A. Yes, I think I continued my studies for a period of six months probably after that time.

Q. What effect did that have upon you as regards your social standing with your fellow students and in the community?

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A. Well I think that had the effect of socially ostracizing me from the friends that I had formerly been going with.

1074 Q. Well, did it do that?

A. It was considered quite a scandal at the time, and naturally the young girls that I had been going with before I couldn't go with then, and I don't think they would have wanted me to. And, while my boy friends didn't pay so much attention to it, the girls did.

Q. Did that have any effect upon your mental state?

A. Quite a bit. The embarrassment and the scandal disturbed me quite a bit.

Q. Well how did it affect your mental condition?

A. It is hard to explain just what would do to one. At that time I had had fairly good plans for a legal career or a business career. And in the town that I lived in, that was no longer possible under those circumstances. A career in the town that I lived in more or less depended upon social contacts, and as my social contacts were cut off, why at the same time it cut off my chances of a career in that town.

Q. Well did this have any effect upon you while you continued your studies at Vanderbilt?

A. Yes, it did. It was embarrassing to be in the law school where those facts were commonly known. I think at that time there was a young girl in my domestic relations class regarding marriage and divorce and she

1075 was studying law, and the professor would quite frequently kid me about my marriage and divorce. In fact, he made it a point whenever that subject came up to refer to me in the presence of this girl, and it was very embarrassing to say the least.

Q. What effect did that embarrassment have upon your mental state?

A. Well, I naturally brooded over that quite a bit.

Q. Well did it have any effect in bringing about a change in your plans and personality?

A. Yes, I think—I am sure it did. Just before that I had been pretty gay and feeling good and pleasant to everybody; but after that happened I rather withdrew unto

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myself, and stayed by myself a whole lot. I severed most of my social contacts, began dropping my studies in school, and eventually did quit the law school soon thereafter.

Q. Was that the reason you quit the law school?

A. I think it was.

Q. What did you do after you quit the law school?

A. I took up employment with the Wayne Lumber Company in Nashville, Tennessee.

Q. What were your duties with the Wayne Lumber Company?

A. I was cost accountant and timekeeper.

Q. How long did you work for the Wayne Lumber Company?

A. I think I worked for them for a period of about five months—it may have been four or five months.

Q. Were your services satisfactory with that company?

A. No; I think I was discharged from the Wayne Lumber Company after a period of 4 or 5 months.

Q. For what reason were you discharged?

A. Well I would say just general neglect of duty and I was drinking quite a bit at that time and did not give attention to my work.

Q. Had you been a heavy drinker before you left the law school?

A. No I had not. I was never a heavy drinker during that period but after that I did.

Q. Well did this forced marriage drive you to drink?

Mr. Brown: Now I am going to object to that.

The Court: Well he can tell what happened in sequence of time, if he wishes to.

Mr. Hogan: All right.

Q. Suppose you say, with reference to sequence of time, whether you were a drinker before this forced marriage?

A. Why no, I wasn't—only moderately. I drank moderately before that and after that occurred I began to drink rather heavily—too heavily.

Q. Now, let's go back a little bit and find out about your religious connections. Did you attend any church

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up to the time that you had this forced marriage?

A. Yes, I attended church regularly up to that time.

Q. Just tell the jury with what denomination you were associated or affiliated?

A. The Presbyterian Church.

Q. Did you actively attend the services of that church?

A. Yes I did. My father was a deacon in that church and he taught the young men's Bible class at that time which I attended also, and I attended regularly every Sunday at that time.

Q. What business was your father in at that time?

A. He was an engineer—a construction engineer and manager of the Nashville Bridge Company.

Q. Did he have a fairly responsible position?

A. Yes, I would say he was one of the leaders of the company at the time.

Q. In the engineering field, how did he stand?

A. He was rated as one of the best bridge en-
1078 gineers in the South.

Q. Did you connect up yourself with any church functions or societies?

A. Yes, I was a member of what they called the Young People's Christian Endeavor and Young Men's Bible Class at the church.

Q. Well, in connection with those societies or functions, did you attend any picnics or parties that the church gave from time to time?

A. All church festivals and picnics and plays and things like that.

Q. Were you ever a boy scout?

A. Yes. I was a member of the boy scouts at the age of 12 years I think.

Q. Did you actively participate in that group?

A. Yes, up until the time that I developed this tuberculosis I did. My father was a Scout Master at the church.

Q. Were you interested, deeply interested or just mildly so, in scout work?

A. I would say I was very deeply interested in it. I lacked only a few merit badges of being what is known as an Eagle Scout, which is about the highest rank the scouts

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have.

1079 Q. Well had your father up to that time been temperate, or had he been otherwise?

A. I think he was very temperate up to that time.

The Court: What time do you have reference to?

Mr. Hogan: Up until the time he joined the boy scouts.

Q. Well did your father ever get intemperate?

A. I think, after I contracted tuberculosis, around that age, that he began drinking quite heavily.

Q. Did you ever endeavor to straighten him out?

A. To the best of my ability at that time I did.

Q. And had he been going to church during those intemperate times, or had he dropped out?

A. Well he began to drop out of the church at that time.

Q. Did you ever influence him to get back in?

A. Yes I did. At one time he gave up drink for a period of a year and came back into the church and resumed the same duties that he had had before.

Q. Do you claim credit for that?

A. I think I do.

Q. Did you belong to any fraternal organizations other than connected with the school, like the Masons or the Elks?

A. Yes, I was a member of the De Moley—that
1080 is a junior order of the Masons, you might say.

Q. Now, you have already testified that you had employment with the Wayne Lumber Company. After you left there, what did you do?

A. I think about that time I married for the second time.

Q. And do you recall the year of your second marriage?

A. It was the early part of 1929—January, I believe. January 9th, 1929.

Q. By that second marriage did you have any child or children?

A. Yes, sir.

Q. And what is that child's name?

A. James Presley Robinson.

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Q. And is he living today?

A. Yes, he is.

Q. How old is he?

A. 14 years old.

Q. Did you have regular employment after you left the Wayne Lumber Company?

A. No I didn't. I had no employment from the time I left the Wayne Lumber Company until I was adjudicated insane.

Q. Well, were you adjudicated insane?

1081 Mr. Brown: I am going to object to that. The records speak for themselves.

Mr. Hogan: We will connect it up, if Your Honor please.

The Court: Have you the record?

Mr. Hogan: Yes, Your Honor.

The Court: All right.

Q. I will ask you if the Circuit Court of Davidson County, Tennessee, ever had occasion to or did make any inquiry into your sanity?

A. Yes in the spring, or early summer, of 1929; in May I think it was. No, I beg your pardon, it was June of 1929.

Q. Were you ever put under observation at any time prior to your being adjudicated an insane person?

A. Yes I was sent to the Central State Hospital for the Insane at Nashville for a period of two weeks observation by the Circuit Court of Davidson County.

Q. Is that in the State of Tennessee?

A. Yes it is.

Q. Is the Central State Hospital in Davidson County a public institution created and maintained by the laws of the State of Tennessee?

A. Yes; it is.

Q. During this two weeks period of observation
1082 were you observed by men of the medical profession?

A. Yes, they had a staff there of four doctors—at least four doctors, possibly five.

Q. And how often would they observe you during that two weeks period?

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A. They submitted me to a lot of tests at that time, physical examinations and mental examinations during the period of that two weeks.

Q. Do you know whether or not those medical men made any report to the Circuit Court of Davidson County?

A. Yes, at the end of that two weeks period they brought me back into the Circuit Court with a report from the staff doctors.

Q. After you were brought back into the Circuit Court of Davidson County, was any jury impaneled to hear testimony and to determine your sanity or insanity?

A. Yes, a jury was impaneled on the day that I was brought back into court.

Q. And what was the verdict of that jury?

A. The jury found me insane but I do not recall the exact terms of the verdict at this time.

Q. And did—

Mr. Brown: Now I am going to object to that. I don't want to interpose useless objections—

1083 The Court (Interrupting): If you have the record suppose we put it in now.

Mr. Brown: Yes, because I don't understand that there is any Circuit Court in Jefferson County.

The Court: Let Mr. Brown see your records.

Mr. Hogan: All right (handing papers to Mr. Brown.)

Q. Now I show you what appears to be an authentic copy of the record or judgment of the Circuit Court of Davidson County, Tennessee, in a proceeding held June 27, 1929 to determine—

Mr. Brown: If you are going to refer to it, just read it the way it is. I don't want you to refer to excerpts that does not apply to the whole thing.

Q. I will ask you to file that together with the duly authenticated report of the medical doctors—

Mr. Brown (Interrupting): I am going to object to that. I have no objection to the adjudication—

The Court (Interrupting): The judgment is what we are interested in.

Mr. Hogan: Yes, and I am prepared to show at this time that the result of the medical examiner is competent

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evidence on the question into the inquiry into sanity.

The Court: Are those medical examiners alive
1084 at the present time?

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Some of them are. One of them isn't.

The Court: I mean, so far as this case is concerned, isn't the evidence we are interested in from the witnesses themselves what they state from the witness stand, and not what they have said at some other time.

Mr. Hogan: If Your Honor please, under the Act of Congress of the due Faith and Credit Laws—

The Court: That is public records—

Mr. Hogan (interrupting): Yes, sir, records of public institutions.

The Court: Well I am glad to hear you on it. Have you any authorities?

Mr. Hogan: I have authorities, but what I am offering now is not bearing upon the records of public institutions but it is a part of the court record itself.

The Court: Well it is almost time for a recess. We will take it at this time and I will hear you in chambers.

Members of the Jury, do not discuss this matter among yourselves or with anyone or permit anyone to talk about it in your presence.

We will have a short recess.

1085 After a short recess, the hearing was resumed,
as follows:

The Court: The ruling on the admissibility of the tendered documents will be postponed until after the noon recess when counsel have had time to further consider the question and advise the court. I think we can proceed, however, with other testimony in the mean time.

(Mr. Hogan continuing:)

Q. Were you or not adjudicated an insane person by the Circuit Court of Davidson County, Tennessee?

A. Yes, I was.

Q. Following that adjudication, were you committed to any institution for the insane of the State of Tennessee?

A. I was re-committed to the Central State Hospital

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at Nashville.

Q. Is that the public institution of the State of Tennessee that you have referred to?

A. That's a state institution.

Q. Did you spend any time in that institution?

A. I stayed there for approximately one year.

Q. Confined all the time to that institution?

A. Yes, I was, inside.

Q. During your confinement or stay there, did any medical examiners or medical staff of that insane institution make examinations of you?

1086 A. Yes, I would say on the average of once a week during that time.

Q. Did they record their findings and observations?

A. Well, I don't know that personally, but I rather think they did.

Q. Now, were you ever—was your sanity or insanity ever later inquired into by any other court or tribunal?

A. Yes, I was removed from Central State Hospital and taken into the County Court of Davidson County.

Q. What state?

A. Tennessee.

Q. For what purpose?

A. For the purpose of a lunacy hearing, and a jury was again impaneled in that case—

The Court: Let's find the date of that first.

Q. What is the date of that hearing?

A. I believe it was in May of 1930.

Q. To refresh your recollection, was it not May 7th, 1930.

A. I am sure that it was; yes.

Q. Was evidence presented before this jury concerning your sanity or insanity?

A. Yes. There was testimony and evidence introduced from several doctors at that time.

Q. Did the jury return a verdict after hearing
1087 the evidence and after being instructed by the court on the law of the question?

A. They did. They found that I was of unsound mind at that time.

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Q. I show you what purports to be and what is an authenticated copy of the judgment of the County Court of Davidson County, Tennessee, referring to the proceeding and inquiry and judgment about which you have just testified, and ask you to file that as a part of your testimony.

The Court: What about the exhibit you were talking about previously? Are you going to tender that?

Q. I hand you an exhibit which purports to be and is a duly authenticated copy of the judgment of the Davidson Circuit Court of Tennessee relating to inquest or judgment rendered in that court on June 27th, 1929, and ask you to file that as your Exhibit No. 14. Will you do that sir?

A. I will.

(The document referred to was handed to the reporter and filed with the record as Defendant's Exhibit No. 14.)

Q. I hand you Defendant's Exhibit No. 15, being an authenticated copy of the judgment of the Davidson County Court of May 7th, 1930, and ask you to file that as Defendant's Exhibit No. 15. Will you do that?

A. I will.

1088 (The document referred to was handed to the reporter and filed with the record as Defendant's Exhibit No. 15.)

Q. Now, following that judgment of the Davidson County Court, were you committed to any insane institution or state institution of the State of Tennessee?

A. I was committed to the Western State Hospital for the Insane at Bolivar, Tennessee.

Q. Is that an institution maintained by the State of Tennessee?

A. Yes, it is.

Q. What period of time did you stay in that institution?

A. I think I was there for a period of exactly three months.

Mr. Hogan: If Your Honor please, I would like to read to the jury these judgments—Defendant's Exhibit No. 14.

Proceedings

“Thursday, June the 27th, 1929.

Court met pursuant to adjournment. Present and presiding The Honorable Chester K. Hart, Regular Judge of the Criminal Court of Davidson County, Division 1, when the following proceedings were had, to wit:

State of Tennessee v. Thomas H. Robinson, Jr.

At a court held June 27, 1929, came the Attorney General, who prosecutes for the State, and the defendant in custody. Thereupon, upon a plea of present insanity, urged by the defendant's counsel, the defendant put himself upon the country and the Attorney General doth the like.

Whereupon, to well and truly assess the defendant's punishment, there came a jury of good and lawful men of Davidson County, to wit: J. H. Pugh, S. C. Battle, G. Zolert, C. W. Wilkerson, L. G. Robertson, D. C. Boston, H. E. Peach, J. M. Garford, J. W. Spain, J. A. Capps, J. M. Peebles, R. L. Turner, who were duly elected, tried and sworn to well and truly try the issues joined and true verdict render, according to the law and evidence aforesaid, upon their oath, do say: That they find the defendant at insane and too dangerous to society to be set at large.”

And the caption of that case is State of Tennessee v. Thomas H. Robinson, Jr.

(Mr. Hogan, continuing reading:)

“Thereupon there the jury was discharged. It is therefore considered by the Court that the defendant be committed to the keeper of the Central State Hospital for the Insane, for the Middle District of Tennessee, in whose custody he shall remain as other patients as long as he is mentally insane, but should his mental condition become normal at any time in the further, the said Superintendent will return said defendant to the Sheriff or Jailer of Davidson County, Tennessee.

Proceedings

It is therefore ordered by the Court that a copy of this order be furnished the Sheriff of Davidson County, Tennessee, and that said Sheriff will deliver the said copy of said order and the body of the defendant to the Superintendent of the Central State Hospital for the Insane for the Middle District of Tennessee, to be kept in accordance with this order.

(Signed) Chester K. Hart, Judge."

Do you think I should read the authentication?

The Court: It is not necessary, unless you want to.

Mr. Brown: I don't require it, Mr. Hogan.

Mr. Hogan: I might add for the purpose of the record that there is attached to it an authentication prescribed by the United States Code, Annotated.

Defendant's Exhibit 15:

"In the County Court of Davidson County, Tennessee. Thomas H. Robinson, Sr. v. Thomas H. Robinson, Jr.

At a court held May 7, 1930, this cause came on this day to be heard upon the petition, the answer of the guardian ad litem and the proof in the case, before the Clerk, with a jury of twelve good and lawful men, duly sworn and composed of Henry B. Adams,

1091 G. G. Hunter, W. R. Price, S. P. Gibson, R. C. Flowers, J. H. Rice, J. E. Wilson, M. C. Wright, Geo.

E. Finnegan, D. R. Myers, J. L. Sullivan, J. W. Lovell, and the jury having heard the pleadings and proof, returned into court the following verdict:

State of Tennessee	}	Verdict of Jury
County of Davidson		

The undersigned jurors having been summoned by the Sheriff and sworn by the Clerk to inquire and ascertain whether Thomas H. Robinson, Jr. is a person of unsound mind, upon oath do say:

1st: That the said Thos. H. Robinson, Jr., is a per-

Proceedings

son of unsound mind, and has not capacity sufficient for the government of himself or his property.

2nd: That the property consists of the following:

3rd: That the next of kin are as follows:

Thos. H. Robinson, Sr., James Preston Robinson, and Mrs. Thos. H. Robinson, Sr., and Mrs. Thos. H. Robinson, Jr.

(Signed) G. E. Finnegan, J. W. Lovell, M. C. Wright, Roy Flowers, J. L. Sullivan, W. R. Price, G. G. Hunter, D. R. Meyers, J. H. Rice, S. P. Gibson, John E. Wilson, H. B. Adams, Jurors.

Filed May 7, 1930.

1092 From all of which the court is of the opinion that Thomas H. Robinson, Jr. is a person of unsound mind, incapable of governing himself or his property and that it is necessary that a guardian be appointed for him, and it is so ordered, adjudged and decreed, and it appearing to the court that Thomas H. Robinson, Sr., the father of the defendant, is a suitable person to be the guardian of the defendant the court is pleased to appoint him guardian, and it is so ordered, adjudged and decreed.

The guardian will give bond in the sum of \$500.00 and take the oath prescribed. The costs in the case will be paid by the defendant.

(Signed) Litton Hickman, County Judge.

Recorded in Minute Book 54, page 473."

I will now read the decree or order of commitment:

"In the County Court of Davidson County, Tennessee In re: Commitment of Thos. H. Robinson, Jr. to the Central State Hospital for the Insane.

DECREE

~~This~~ This cause came on to be heard before the Hon. Litton Hickman, County Judge, on this the 23rd day

Testimony of Thomas H. Robinson, Jr.

of May, 1936, upon complaint of Thos. H. Robinson, Sr., alleging that the said Thos. H. Robinson, Jr. was insane.

From the sworn testimony in open court of Thos. H. Robinson, Sr., and Dr. J. W. Fenn and Dr. Paul DeWitt the Court is of opinion and doth decree
 1093 that the said Thomas H. Robinson Jr. is a person of unsound mind and should be confined in the Central Hospital for the Insane.

The Court further finds that the said Thomas H. Robinson Jr. has relatives who are amply able to pay for his maintenance in said hospital.

The Court hereby nominates and appoints Thomas H. Robinson Sr. as guardian for the said Thomas H. Robinson Jr. and upon his giving bond as required by law letters of guardianship will be issued to him by the clerk of this court.

Enter

(Signed) Litton Hickman Judge."

and attached to that is the authentication by the Clerk and by the Judge in accordance with the law.

Q. Now did you stay for some weeks at Bolivar I believe you said?

A. Approximately three months I think.

Q. Were you confined to that Western State Hospital during that three month period?

A. Yes I was.

Q. Have you ever been restored to sanity by any proceeding in any tribunal whatsoever?

Mr. Brown: I am going to object to that. The laws of the state of Tennessee provide that the superintendent of the hospital, when in his opinion the man is sane,
 1094 can release him.

Mr. Hogan: My question is not whether he was released, but whether he was restored by judicial proceedings.

Mr. Brown: That's the effect of the release of the superintendent.

The Court: I think he is entitled to say whether there

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was any judicial proceedings. Of course, you can bring out the other yourself. Both can be brought out.

Mr. Hogan: May he answer?

The Court: Yes.

The Witness: Will you repeat that question, please?

Question read by the reporter, as follows:

“Have you ever been restored to sanity by any proceeding in any tribunal whatsoever?”

A. No.

Mr. Brown: A further ground of objection, Your Honor, is that the laws of the State of Tennessee for that purpose allow the superintendent of a state institution to make a finding.

Mr. Hogan: The question is, whether he has been restored by a court.

The Court: I believe all the facts pertaining to that can be brought out by both the defense and the prosecution. Whatever happened on that point, I think is admissible.

1095 Mr. Hogan: Then I take it, he may answer my question.

The Court: Yes.

A. No, I was never taken back before the court or any court, nor did I go through any proceedings at all for the purpose of restoring my sanity.

Q. Were you released or taken away from the Western State Hospital for the Insane?

A. Well, I was taken out of there at the instance of my father over the objections of the doctor, the superintendent of Western State Hospital.

Q. Your father had been appointed your legal guardian, according to that order we just read.

A. Yes, he was my legal guardian.

Q. Did he take you out, your father?

A. Yes. He moved me from Western State Hospital and furnished bond in the County Court.

Q. After your being taken out of Western State Hospital, what did you do?

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The Court: Now let's find out when that was.

Q. When were you taken out of Western State Hospital by your father?

A. I recall the date as August 24th, 1930.

Q. Now, with that date in mind, what did you do after being taken out by your father?

1096 A. I returned to my family's home.

Q. Did you get employment, or try to?

A. I made several attempts to procure employment, my father made several attempts also, but I was unable to secure employment for quite a long time.

Q. Did you ever get any employment after you were taken out of Western State Hospital?

A. Yes, in 1931, in the spring, nearly a year later.

Q. Where was that employment?

A. That was with Servel, Incorporated, in Evansville, Indiana.

Q. How long did you work for Servel?

A. One day.

Q. Why did you not work longer?

A. It is hard to say. I became dissatisfied with the work and went back home.

Q. To Nashville?

A. Yes.

Q. Did you obtain any employment elsewhere, or try to?

A. I didn't obtain any employment until June of 1931.

Q. What did you do between the time you left the one day's employment with Servel and June, 1931?

A. I think I stayed more or less at home at that time.

1097 The Court: How long a period was that?

The Witness: I couldn't say for sure just what time I was employed by Servel because I don't recall it.

The Court: You said the spring of 1931.

The Witness: The spring of 1931; yes, sir.

The Court: Can you give it any more definitely than that?

The Witness: No, I can't.

Q. Well, what had been the state of your health or

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mind, either, or both, between the date of your being taken out of Western and your attempt to get employment with Serval?

A. Well, when I came back to my home, I found it a little more difficult than ever to obtain employment. It seemed like the stigma of insanity was even worse than the disgrace of the forced marriage at that time, and the fact that I had been adjudicated insane many of my friends at that time shunned me, and I think that I more or less kept to myself at that time too.

Q. Did you have any ideas about your friends?

A. Yes. I rather felt that they were talking about me. Every place that I would go I would see groups of them, and I felt that they were constantly talking about me, about the insanity adjudications and forced marriage.

Q. Did you go back to church?

1098 A. No, I didn't.

Q. Any reason for that?

A. Well, I had some kind of prejudice at that time against the church. I felt that the preachers when I had gone were preaching directly at me rather than the congregation; in other words, I took everything to heart that the preacher said as referring to me myself.

Q. Had you felt that way previously when you had been attending church?

A. No, I hadn't.

Q. Before this forced marriage, I mean.

A. No, I never had those ideas until after that.

Q. While you were in these two insane institutions, did you have any ideas of reference? Did you associate freely with the other inmates?

A. In the insane asylum?

Q. In the insane institutions, or did you stay to yourself?

A. I stayed more or less to myself in the insane asylums, yes.

Q. Did you have any ideas about those people in the insane institutions, from the officers on down to the inmates?

Mr. Brown: Your Honor, I certainly am going to sug-

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gest that Mr. Hogan be sworn. He is doing the testimony and Robinson is answering yes or no.

1099 The Court: I think Mr. Hogan can make them less leading if he will try.

Q. While you were in Central State Hospital for the Insane, did you formulate in your mind or have in your mind any ideas concerning the people of that institution?

A. Well, I felt that all the doctors in the institution were against me, and I used to ask them very frequently if I could get out, tried to convince them that I was sane, I felt like they were holding me against my will and against the law, and my desire naturally to get out of the hospital if I could, but they didn't see it my way.

Q. Did you have any idea of persecution from the hands of anybody?

A. The doctors.

Q. Did you associate—along the line of persecution, suppose you elaborate on that and tell how you felt toward them.

A. Well, as I said before, I felt that they were holding me wrongly at the hospital, that they had no right to hold me there.

Q. The law had disagreed with you, though, had it not?

A. It seems that it had.

Q. How did you spend your time in Central State Hospital? Mingling with the other inmates or to yourself?

1100 A. Well, the way it seems to me now, it seemed like I spent it in a dream. I don't recall much about it.

Q. I will ask you about your stay in Western State Hospital. Did you have any ideas of persecution while you were there?

A. Well, I took a dislike to the superintendent of that hospital and I felt like he had taken a dislike to me, Dr. Cocke—Dr. E. W. Cocke.

Q. Was that your feeling toward him?

A. Yes, it was. I was working in the hospital and working outside and getting fresh air and sunshine, and I did violate the rules of the hospital, I know, and neglected

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my work and went off to town, and Dr. Cocke locked me up on the ward and took all my privileges from me at that time, and I felt like he was absolutely persecuting me by doing that.

Q. Did you feel that he was right or wrong in his attitude or action toward you?

A. I felt that he was very much wrong.

Q. Did you feel that you were correct and he was wrong?

A. I sure did.

Q. How about your attitude or ideas towards the people of your own city after you were taken out of
1101 Western State Hospital, with reference to any ideas of reference or persecution?

A. Well, I felt like that all my former friends were against me and I had a desire to get away from Nashville and stay away from there. That was my sole idea at that time. I wanted to get away. I felt like everybody in the town was against me and pulling against me. I couldn't get work and I wanted to get out of Nashville.

Q. Did you ever have at any time any ideas of grandeur?

A. Well, I know that while I was in my home, during the time that I was unable to get employment, that I had some ideas along the lines of politics and religion, and it seems that I took an unnatural interest in national affairs rather than in the commonplace interests of an ordinary person. In other words, my interests were not with reality or common things that the average person is interested in at all. It usually was in things that didn't concern me at all, above my head, like national events, and politics, religion.

Q. Did you feel that you had the capabilities or qualifications of coping with those national events?

A. I sure did. I thought that I was qualified to handle them, felt like that I was abused that I couldn't be in there handling them, taking active part in them. I know now that I certainly had no place in that scheme of things.

1102 Q. What is your middle name?

A. My middle name is Henry.

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Q. Does that have any significance in your life?

A. Yes. It has quite a bit of significance.

Q. Did it at that time?

A. Yes, at that time, and it had too much significance for me. My family were descendants of Patrick Henry, and some of them made quite a thing of that relationship, descent, ancestry, and I often argued with my people at home and my family that I believed in the theory of reincarnation, that the spirit of Patrick Henry was reincarnated in me, and I felt that because of that I should have some high place in the national affairs. In other words, I was absolutely convinced that I was the reincarnation of Patrick Henry.

Q. And for the purpose of the record, who was Patrick Henry?

Mr. Brown: I'll stipulate that.

The Court: Either stipulate it or let the witness say it.

Mr. Brown: Whichever he wants.

Q. Suppose you tell it, as you understood who Patrick Henry was.

A. Why, Patrick Henry was one of the leaders in the American Revolution and gave his speech before the Second Constitutional Convention in Virginia, and one
1103 of the framers in the Constitution of the Bill—
Declaration of Independence.

Q. Was he the gentleman who said, "Give me liberty or give me death"?

A. He did.

Q. That's your position in this court now, isn't it, Tom?

A. It sure is.

Q. Did you feel that you had any direct tie-in with the life of Patrick Henry?

A. Yes, I did. I felt like at the time that I was practically ordained to carry out his work.

Q. Now, did you honestly feel that way or are you just trying to tell that today in this court room?

A. No. I honestly felt that way at that time. I realize it sounds ridiculous now, but I think I spent a great deal

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of my time that period of 1931 and later arguing with my family that that was true, and my family would argue against me and try to dissuade me from my theory, and that would just make me madder than ever. I would go to my room and close myself in my room, I was so mad that they would even contest that theory of mine. I wanted them to agree with me, but they wouldn't do it.

Q. Did you have any arguments with your father other than that?

1104 A. Yes, we had many arguments.

Q. Over what?

A. Politics, religion, and some of my theories at that time.

Q. Did you get so infuriated at any time as to get out of control?

A. Yes, I was out of control on several occasions. I let anger get the best of me.

Q. How would you get when you let anger get the best of you, as you say?

A. Well, I don't know just how to describe that.

Q. Did your personality change when you would get mad?

A. Well, now, I rather think it did; in fact, I know that it did, but at that time I wasn't conscious of any change.

Q. What change would come over you, if any? Would you have different appearance from your eyes, that you know of?

A. I can't remember or recall that I did. I rather think that I did, but I can't say positively because I don't remember that.

Q. Now, is there anything else in your life that you have omitted between the time that you left Bolivar and got this employment at Servel and worked one day?

1105 A. No, not other than I have already stated.

Q. Did you get any employment in 1931, or try to?

A. Yes, in June of 1931 my father and I came to Louisville, came here to Louisville, and at that time we called on Mr. C. C. Stoll at the Stoll Oil Refining Com-

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pany, 227 West Main Street, I believe it was.

Q. Had your father known Mr. Stoll or any member of the Stoll family before he brought you here?

A. My father had formerly been associated with Mr. Stoll many years ago in some kind of a venture known as the Daniel Boone Axle Grease Company, many years ago. When it was, I do not exactly recall.

Q. Had you, yourself, known Mr. Stoll or any member of the Stoll family before your father brought you to Louisville?

A. Not at that time, no. That was my first introduction to Mr. C. C. Stoll.

Q. Did you obtain employment with the Stoll Company as a result of your father bringing you here, or otherwise?

A. Yes. At the office I was introduced to Berry Stoll, and as a result of our conversation I was given a job with the Stoll Oil Refining Company. They wanted me to start in as a filling station attendant and work my
1106 way up. Mr. Stoll promised that he would make me a supervisor in the company eventually.

Q. Did you come here and live in Louisville then?

A. I did. I brought my wife and child up and we lived here in Louisville at that time, and I took up the employment at Second and Broadway station of the Stoll Oil Company.

Q. Where did you live in Louisville at that time?

A. First lived at 418 West Oak Street and later moved to 1521 S. First Street, and again in Crescent Hill. I don't recall the address in Crescent Hill.

Q. What were your duties at the Stoll Oil Refining Company, Second and Broadway station?

A. That of a filling station attendant, to fill up gas tanks, take care of the water, check the oil, wipe the wind-shields—regular course of employment of filling station attendant—take care of the parking lot in the rear of the station.

Q. How long did you work for that company at that station?

A. I worked there for a period of approximately six

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weeks.

Q. Just continue on and tell us what else happened to you here in Louisville.

A. You mean, while I was working with the Stoll
1107 Oil Company?

Q. Yes, if anything did happen.

A. During the course of the time I was at the station, Mrs. Alice Stoll drove in with a car and parked it on an average, I would say, of several times a week. I don't know how often. I would park her car for her. I had to park it or get a ticket from her. I was told at the time when she came in the station she didn't require a ticket, the manager of the station informed me to that effect when I first went to work there.

Q. After you were made acquainted with who she was, did you recognize her then as she came in later?

A. Yes, I had to, because it was my duty to issue tickets, parking tickets, for the cars and collect for them later on, and I naturally had to know her or otherwise I required a ticket from her to park her car.

Q. Did you ever have any conversation with her?

A. Yes, I did, quite frequently.

Q. Suppose you tell the jury what contacts you had with her, if any?

A. It was merely commonplace conversation at the time about trivial matters. I think we engaged in somewhat of a flirtation, you might say, at that time. I parked her car. Often she would drive her car into the parking lot and leave it in the driveway and get out and go
1108 about her business, and I would take her car and park it for her while she was gone. Sometimes when she would return I would get the car and back it out and get it ready for her to drive off in.

Q. Did you ever have any contact with Mrs. Alice Stoll?

A. Yes, I did.

Q. Suppose you tell in your own words what your connections with this filling station and with Mrs. Stoll were, in your own words.

A. Well, now, I don't believe I understand you. That

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was the only connection I had with Mrs. Stoll at the Second and Broadway station. However, I did meet her later on, near the station on the River Road. While I was still employed at Stoll I had been down to the Stoll oil plant down near the River Road to see Mr. Arthur Youngerman, who as I understand it is a nephew of Mr. Stoll, and as I was leaving the Stoll plant I saw Mrs. Stoll at the station which was—

Q. (Interrupting) When you say Mrs. Stoll, which Mrs. Stoll?

A. Mrs. Alice Speed Stoll. I saw her at the station, at the Stoll Oil Station across from the plant.

Q. Did you talk to her on that occasion?

A. No. She smiled at me and recognized me, a
1109 case of mutual recognition. At that time I followed her car. She and I rode alongside each other along one of the streets, I don't recall what street it was, and engaged in snatches of conversation while we were driving along, sometimes side by side, until we got to what was then known as the Cut-off Bridge on the River Road.

Q. Did you leave her then and she go her way and you go yours?

A. No. There was some kind of a roadside inn right above the Cut-off Bridge, and she pulled her car in by the side of that inn, more or less towards the back. She got out of her car and got into my car.

Q. Where did you go, if any place?

A. I drove out the River Road to a lane at that time that led to Rose Island Ferry.

Q. Did anything—what happened then? Did you proceed on or what happened?

A. Well, I don't know just what you mean.

Q. I mean, did you stop the car or did you turn around and come back?

A. We stopped at a secluded spot on this lane leading to the Rose Island Ferry.

Q. Suppose you tell the jury in your own words anything that happened on that occasion, if it did.

A. Yes. At that period Mrs. Stoll and I en-
1110 gaged in sexual intercourse.

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Q. Did anything else happen after that?

A. We drove back to where her car was parked by this roadside inn, and I let her out. She got into her car and before she left we made some kind of tentative arrangements for another date later on.

Q. Did you ever meet her again on any other occasion?

A. Yes. I met her a second time down town in the city, several days after that. I don't recall whether I called her up or whether it was the result of our conversation before we left the last time, but I did meet her down town in the city one afternoon, I think I was still employed with the Stoll Oil Company at that time.

Q. What happened on the occasion of the second meeting, if anything?

1111 A. We drove out the Dixie Highway to a spot that I know as the Beach Grove tourist camp.

Q. How did you get out to that camp?

A. Well we drove either the 7th Street Road or 18th—

Q. (Interrupting) I mean in what kind of a vehicle? By what means of transportation?

A. It was my own automobile. A Chrysler 62 Coupe with a Tennessee license plate on it.

Q. Well what happened at the Beach Grove cabins? Is that what you said it was?

A. The Beach Grove tourist camp. We registered there as man and wife.

Q. Well did anything else happen there?

A. Yes. During the course of the afternoon we engaged in sexual intercourse three or four times, I would say.

Q. Did you ever see her after that?

A. I did.

Q. Suppose you tell the jury now, without my asking you any questions, of any other meetings you had with her?

A. On one other occasion we went to the Beach Grove Tourist camp. That was two times we went there. I do not recall whether it was during that same six weeks period

I was working for the Stoll Oil Company or not. I
1112 know we did go out there again on one other oc-

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cession. About that time I quit the Stoll Oil Company and took a job in the Starks Building with the Mutual Life Insurance Company, of Baltimore. I had a debit which gave me time off in the afternoon to do as I pleased and during one afternoon of that period that I was in Louisville I would say it was the early part of July or possibly the middle of July, I can't say for sure, we went to—over in Indiana, Jeffersonville, Indiana, across the Municipal Bridge and at the toll gate on the bridge I recall that Mrs. Stoll gave the man the required fee. I think it was a half a dollar at that time. I am not certain of that. We drove on to the outskirts of Jeffersonville, near some roadhouse there I think was known at that time as the Log Cabin, and there were some tourist camps right above this log cabin, a roadhouse. We stopped in one of those—it had a white front on it; seemed like it was a fairly new place. It had a store in connection with it and the main office, and it had cottages in the back and we registered there as man and wife and took one of the cottages in the rear and stayed there during the course of the afternoon and returned to Louisville, and during our stay in that camp we again had intercourse, I don't know how many times.

Q. Was that the last time that you met with her
1113 during that year.

A. That was the last time I saw Mrs. Stoll until 1934.

Q. Did you leave Louisville during the summer of 1931?

A. Yes; I left Louisville sometime in July or August of 1931, and went to Chicago. I obtained employment in Chicago.

Q. What did you do in Chicago?

A. I first went to work for the ABC Oil Burner Company; at Winnetka, Illinois.

Q. After you had left Louisville, did you go back to your home in Nashville before you went to Chicago?

A. Yes, I went back for a few weeks and through my father I made arrangements for this job at Winnetka.

Q. How long did you stay in Nashville after you had been in Louisville here during the summer of 1931?

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A. Well I can't recall just what period of time I stayed in Nashville. I wouldn't know that.

Q. I know, but with reference to weeks or months?

A. I would say that it was at least two months because when I arrived in Winnetka I know it was late fall.

Q. And what did you do? You say you got a job with the ABC Oil Burner Company?

A. Yes.

1114 Q. What period of time did you work for that concern?

A. I worked there for maybe a period of two weeks and then quit.

Q. Did you assign any reason for quitting?

A. No, I did not. I just quit.

Q. And then where next did you work or try to get employment?

A. I came home from Winnetka I think back to Nashville, and I believe the next period of my employment was some time later with the Andrew Jackson Business University in Nashville.

Q. Well, what association or connection did you have with the Andrew Jackson Business College in Nashville, Tennessee?

A. I was merely a salesman for night law courses at that place.

Q. By salesman, what do you mean?

A. Well I would sell these law courses to various prospects, prospective students.

Q. Did you meet with any success along that venture?

A. With very mediocre success. I stayed there a short time and sold a few courses and was not able to make a go of it and I quit that job.

1115 Q. And what did you try to do next?

A. That was 1932, I believe, and—

Q. (Interrupting) Did you ever have any connection with the Spreckles Estate?

A. Yes. Mr. Claude Spreckles and his attorney came to Nashville with a garbage disposal company that they were trying to organize, and for a short period of time I was connected with Mr. Spreckles and I was unable to

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make a go of that and I severed my connection with them. That was in the late fall of 1932.

Q. Now, with reference to your married life, was your married life docile or was it stormy?

A. I would say it was rather hectic.

Q. You did have a son by this second wife, I believe?

A. Yes; I did.

Q. When was that son born in connection with your second marriage?

A. He was born while I was in the insane asylum in 1929—August 31, 1929.

Q. When was—when you say that your married life was hectic, do you mean that you had family arguments, or just what do you mean?

A. Why I think we had quite a few arguments.
1116 I think I was mostly to blame for those.

Q. Well did you ever get out of control with your temper?

A. Yes, I did, I think, on frequent occasions.

Q. Did you ever attempt to organize any school of any kind?

A. Well I had some ideas about organizing a law school. I was not satisfied with the way the University ran their law school. In other words, I had taken a dislike or prejudice toward the University because of the fact that I had to leave there, or did leave there after that trouble. And I just felt they did not teach law right at Vanderbilt University, and I wanted to organize a law school of my own.

Q. Did you have any ideas about how law should be taught?

A. I sure did. In my own mind.

Q. Did that agree with Vanderbilt's ideas?

A. No it didn't.

Q. Well did you feel that you had an inferior or superior idea of the way of teaching law?

A. I thought it was quite superior to the way they taught it at Vanderbilt.

The Court: Members of the Jury, we will take
1117 the noon luncheon recess. Do not discuss this mat-

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ter among yourself in any way or permit anyone to talk to you about it to you or in your presence.

At this point there was a recess until after lunch, after which the following proceedings were had:

Direct Examination Continued by Mr. Hogan.

Q. How long did you attempt to conduct a law school or have any part in it?

A. Are you speaking of the Andrew Jackson University night law school?

Mr. Hogan: No, I will withdraw that question.

Q. Now, with reference to how the law school at Vanderbilt should be run, did you offer any ideas to the faculty or management at Vanderbilt?

A. No, I don't think I did.

Q. Did you retain those ideas in your own mind?

A. Those were mostly in my own mind at that time.

Q. Did you ever go to Indianapolis prior to 1932 in search of employment or otherwise?

A. Yes, I had been in Indianapolis at some time during the period of 1932 or 1933—I am not sure as to what time it was.

1118 Q. Well, with reference to trying to keep your employment in sequence, can you tell us where next you had tried to gain employment?

A. I think it was in Indianapolis at an employment agency there, and through this employment agency I secured the next job.

Q. And where was that?

A. That was at the Mar-Main Arms Apartment Hotel at South Bend, Indiana.

Q. How long did you work at that apartment?

A. For a period of 3 months.

Q. What were your duties in connection with your employment?

A. Well mostly—my wife and I both were employed there. She was the housekeeper and I was the maintenance man.

Q. Did you ever go to Chicago after that?

A. Following my discharge from there, I did go to

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Chicago.

Q. Why were you discharged from your South Bend apartment hotel job?

A. I think that at the time I had made some accusation against the manager of that hotel, but I forget what the details of it were now, and I know that he became insulted over the matter and discharged both me and my wife.

1119 Q. Did you try to obtain any other employment in Chicago, or in that vicinity?

A. Yes, I tried from the period of March 1933 until I came back to Nashville in the summer of 1933 to obtain employment in Chicago, but I was unable to get it.

Q. Well what means did you use to obtain employment in Chicago?

A. Well I registered with all of the employment agencies. I answered ads in the newspaper help wanted column, and through connections of my father's and friends of mine attempted to gain employment. I wrote letters of application on the typewriter to various concerns.

Q. Was that the period in which it was difficult to obtain employment?

A. Yes, it was. It was during the depression.

Q. What success did you have with your applications for employment?

A. Absolutely none.

Q. About how many letters did you write—letters of application for employment if you remember?

A. Well I would say literally hundreds of them.

Q. Did you ever write any books, or attempt to?

A. At the time I was employed with the business university, I did write a book on how to get a job, based on the experience I had had in the employment department of this school.

1120 Q. Were you able to use the fruits of your own books or writing?

A. Well I didn't seem to be able to get much benefit from it.

Q. At any rate, you didn't get a job?

A. I didn't get a job.

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Q. Did you ever run any want ads in any Chicago papers?

A. I ran one ad in the Chicago Tribune.

Q. What effect upon your mind did your inability have to procure a job?

A. Well at some time during the time that I was attempting to get employment I think some employees—prospective employer I mean, either told me or imagined it I can't remember which it was, that Mr. Stoll was giving me bad references.

Q. What Mr. Stoll do you mean?

A. Mr. C. C. Stoll. I had given his name in all my applications for employment. Every place I went his name was mentioned as my former employer, at the Stoll Oil Refining Company.

Q. Did that belief or information have any effect upon your mental condition?

A. It certainly did. I felt that Mr. Stoll was
1121 purposely keeping me from getting work. Every place that I went for employment and was turned down from one place to another, which must have been hundreds of them in that period of time, I felt it was solely through Mr. Stoll giving me a bad name that I was unable to secure employment.

Q. Did you believe that in your own mind?

A. I firmly believed it.

Q. How were your funds about that time?

A. Well I think for practically all of that time my funds were very low.

Q. Did you ever make application to Mr. Stoll or anybody of the Stoll Oil Refining Company for reemployment after you had worked here in Louisville for six weeks?

A. Yes, I did. That was in 1934—possibly in May of 1934.

Q. Did you see Mr. C. C. Stoll personally?

A. Yes; I did.

Q. Tell the jury the conversation that you had with him, or just what happened on that occasion?

A. Well, Mr. Stoll told me at that time that it was not the policy of the company at that time of the company to

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re-hire employees that had formerly quit. And he made some mention of the depression, and that the country was in the hands of a dictator. He was speaking of our now President Roosevelt; and that he would not spend
 1122 one dime to even buy any paint for his filling stations—

The Court (Interrupting): Is this evidence competent, gentlemen?

Mr. Brown: No, it isn't.

The Court: There is no objection made to it, but it seems we are going pretty far afield, into hearsay.

Mr. Hogan: It has a bearing upon his mental attitude.

The Court: I don't care whether it has any bearing or not, what Mr. Stoll said to this witness is purely hearsay, isn't it?

Mr. Hogan: Well I think, if Your Honor please, in these mental cases or insanity cases that anything that anybody says to the person or subject is competent to show what effect it would have upon his mental condition. And it is certainly competent for that purpose.

The Court: All right. Go right ahead.

Q. Well did he re-hire you?

A. No, he did not.

Q. Now what effect did his statement and words to you have upon your mental condition?

A. Well I then felt convinced that it was through Mr. Stoll that I had failed to get employment with these other concerns.

Q. Did it arouse in you any spirit of Patrick
 1123 Henry-ism?

A. Well I felt that at that time that Mr. Stoll was—this was in my own mind at that time, I can only state how I felt—that he was a menace to the country. I thought that he was actually the person that was contributing to the downfall, and I thought something ought to be done about it. I didn't know what. But it was firmly entrenched in my mind that something should be done about Mr. Stoll.

Q. Well was that an idea of revenge or was it an idea of some other kind?

A. No, I cannot say it was any revenge or any per-

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sonal harm, but it was more of an inspiration derived from the fact that I felt I had descended from Patrick Henry—more of a patriotic feeling, you might say.

Q. You mentioned the word “inspiration”. Now what do you mean by that?

A. Well I felt inspired to do something about it. Due to the fact that I felt I was descended from Patrick Henry, I felt like I was Patrick Henry reincarnated.

Q. Then where did you go after you did not receive that reemployment at the Stoll Oil Refining Company?

A. At that time, why I went back to Chicago, I think. But just previous to that I had worked at Du Pont in Nashville, previous to this time.

Q. Do you recall what year that was?

1124 A. I worked for Du Pont from November 1933 until May of 1934, at which time I was discharged because of my insanity record—which I had failed to state upon my application for bond.

Q. Where did you go from Du Pont?

A. Well it was at that period that I came to Louisville and called Mr. Stoll, and from there I went back to Chicago.

Q. Well let me backtrack now and ask you if those ideas you had with reference to Mr. Stoll in 1934 or at that time are your ideas now?

A. No; absolutely not. As a matter of fact, today I am not at all sure that anyone told me that Mr. Stoll was giving me a bad reference. I cannot say today whether that actually existed, whether some man that I interviewed actually told me that or whether I imagined it.

Q. But did you have it in your mind—

A. (Interrupting) I had it in my mind at that time.

Q. Now you went from Du Pont in Nashville, or just outside of Nashville, to Chicago again. What did you do there?

A. In Chicago I obtained employment through a friend of mind as a night janitor in a building in Oak Park.

1125 Q. How long did you have that job?

A. A few weeks.

Q. What kind of work did you do as night janitor?

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A. Regular janitor work—cleaning halls and cleaning offices. I worked during the daytime—after I had finished my night work I worked during the daytime until about 3:30 in the afternoon tearing down a building.

Q. And after you left that employment, then what did you do?

A. I think that was the last job that I held. I moved from there to Magnolia Avenue in Chicago.

Q. Now suppose on from that time on detail what happened in order of sequence, if you can?

A. Well it is rather difficult but I will take it up and do the best I can on that. At the time I moved from Magnolia Avenue, I stayed there a few weeks, and I rented a car from the Saunders U-Drive-It Company for the purpose of moving from one apartment to another, and I did pack up my belongings to move to the South side of Chicago but instead my wife and I kept on going until we reached Indianapolis. We put up at a hotel in Indianapolis, I forget which one, and we then rented an apartment at 2735 North Meridian Street in Indianapolis?

Q. And what apartment number was that?

1126 A. Apartment 2.

Q. That is the apartment about which there has been some testimony in this court on this trial?

A. Yes.

Q. Do you recall about what time you rented that apartment?

A. It was some time in September—around the early part of September. The first week in September.

Q. And did you work in Indianapolis?

A. No I didn't. I made several attempts to secure employment there and I was unable to.

Q. What effect did that have on your mental state?

A. You might say that added fuel to the fire. That made me more perturbed than ever. I brooded over it considerably. At that time I was in such a mental condition that I don't think I felt anything at all.

Q. While you were in Indianapolis did Mr. Stoll enter your mind? Mr. C. C. Stoll?

A. Constantly.

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Q. Tell the jury how his name or his person associated with your mind or your mental condition?

A. Well I felt that Mr. Stoll had been the cause of most of my troubles. I felt that something should be done about it. I felt that he was a menace and I looked
1127 upon him as being a powerful capitalist and a man who was destroying our country, responsible for the depression and I wanted to do something about that.

Q. Well did you want to do something about it from an idea of revenge or from patriotism?

A. No; it was solely through a motive of patriotism that I wanted to remove him.

Q. From that point on just tell what you did that in any way connected your life with the members of the Stoll family?

A. Well while I was in the apartment I prepared some kind of a ransom note with the idea of abducting Mr. Stoll. I made the note out in the name of Mr. C. C. Stoll. And I had that purpose in mind to kidnap Mr. Stoll, and—

Q. (Interrupting) C. C. Stoll?

A. Yes, C. C. Stoll. I took my car and my wife and we drove to Louisville and she got on the train at the Union Depot and went home and I registered here at the Tyler Hotel. That was the early part of October 1934.

Q. Now you say your car. Do you mean this car that you had rented in Chicago?

A. This car that I had kept from the Saunders U-Drive-It Company, yes.

Q. And you got here on October 8th, did you?

A. I think it was October 8th that I checked into the Tyler Hotel.

1128 Q. And that was in the year 1934?

A. Yes.

Q. All right. Now your wife was not with you. She had gone on?

A. She had gone to Nashville.

Q. Now just tell the jury what happened after you arrived in Louisville and stayed at the Tyler Hotel?

A. Well I still had in mind the purpose of kidnapping Mr. Stoll and the next day I think it was I drove out to his

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residence on Cherokee Parkway and entered the home on some kind of a pretense or other that I was a telephone man. I went into the house looking for him and didn't find him; and I went over to the adjoining house of Mr. George Stoll, hoping to find him there, and he was not at Mr. George Stoll's home; and so I left there and came on back to town and apparently gave up the idea for the time being.

Q. Well what did you do the next day or what did you do on October 10th?

A. I think at that time I, as I could not find Mr. Stoll, I planned to kidnap Berry Stoll. I was not sure where he lived, and I got the name from the phone book and I drove out to some filling station, this Mr. Kottke who was on the stand, I do recall talking to him and asking
 1129 his directions to the Stoll residence.

Q. Did you associate Mr. Berry Stoll with Mr. C. C. Stoll?

A. I knew Berry Stoll.

Q. Did you associate Berry Stoll in your mind with the C. C. Stoll situation?

A. He was his son and I felt them equally blamable for whatever offense that I conceived in my mind that they had committed. So I could not find C. C. Stoll and I drove out to the Berry Stoll residence with the purpose in mind of kidnapping Berry Stoll.

Q. Now what day was that. I mean, what day of the month?

A. I am not sure myself but I think it was October 10th.

Q. 1934?

A. Yes.

Q. And what did you do when you arrived at Berry Stoll's home?

A. I first entered the house. A maid came to the door and I entered the house—I think I told her I was the telephone repairman or lineman. I entered the house and picked up the telephone and made some pretense of calling somebody and I don't remember who it was. She
 1130 told me that Mrs. Stoll was upstairs and I thought

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possibly she would recognize my voice, but she evidently didn't. I asked the maid if there was an extension upstairs and she said there was in the bedroom, and her to go up and use that extension, thinking that—she told me that Mrs. Stoll would move over into the guest room while she tried the extension up there. I thought I could go up and talk to Mrs. Stoll personally before Berry came home. I wanted to talk to her personally first. This was in the early part of the afternoon—I would say about two o'clock.

Q. Well did you finally see Mrs. Alice Stoll there in that residence?

A. Yes. I talked to her in the guest room. The maid happened to be in the guest room also.

Q. Well just tell the jury what happened as you remember it?

A. I went into the guest room and Mrs. Stoll smiled and said, "What are you doing here?" and I told her, I said, "I came to kidnap Berry Stoll". And she seemed to take it as a joke and after she saw that I was serious about it she said "Well you can't get away with that. You know Berry. You are just an amateur", or something to that effect and she said, "You can't get away with it."

Well we talked for about an hour and I tied her **1131** hands loosely with some wire with the intention of taking Berry when he came home. And at that time she suggested that she give me a check which I refused. I turned the check down. And then Mrs. Stoll suggested to me that she would go with me herself instead of taking Berry. She did not want Berry to find me in the house when he came home. We had talked already for about an hour or so and it was getting about time for Berry to come home and she suggested that she go herself and she stated to me that she would help me obtain the money if I would give her half of it. I didn't know whether she was joking or whether she meant it or not but she stated that she would help me obtain the money if I would give her half of it. At that time why I decided to go with her, take her with me. I let her secure a coat. She took the wire off of her wrists, it was only on there loosely. And she got

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her coat from her closet, and we went down the stairs and out of the house and she got in the back end of the car and we left the Stoll residence.

Q. What happened to the maid all this time?

A. I first tied the maid's hands, and she was on the floor by the bed. When Mrs. Stoll suggested that I take her instead of Berry, that there would be trouble if Berry got home, and she mentioned something about me giving her half of the ransom money, I told her that

1132 the note had just been made out for \$30,000 and that if I was to give her half of it I would have to raise the amount, and I had this ransom note made out to Mr. C. C. Stoll in my pocket. I took that note out of my pocket; changed the amount from \$30,000 to \$50,000; changed the name on it in pencil for Mrs. Stoll instead of Mr. C. C. Stoll. I marked her name in there in pencil across the face of the ransom note in pencil "For Mrs. Stoll." I changed the amount in pencil to \$50,000 instead of the \$30,000 that was in there. I went over to tie the maid's feet and this note fell out on the floor and this was the way the note was left in the home. It fell out of my pocket while she was tied up on the floor, as I was tying her feet.

Q. Now, Mr. Speed's name has been associated with the ransom note. Do you know anything about that? If you do, tell the jury.

A. I can't say definitely why I put Mr. Speed's name in the note. I don't remember. I had some conversation with her about her father—the amount of money to be obtained was \$50,000, and I think she said that she did not think Berry or Mr. Stoll could get that amount of money up; that her father would have to get it. And on the strength of that I put Mr. Speed's name on the face of the ransom note.

1133 Q. Did she walk to the car or did you carry her to the car?

A. She took her coat from the closet, this checked coat that she obtained from the closet, and put it on. She put her hands through the sleeves of it. Her wrists were not bound. She walked down to the car and got in the back of the car. And it was my intention—our intention—to

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leave by the River Road and it was then nearing 5 o'clock the time for Berry to come home and she was apprehensive that she would see Berry on the way and so she knelt in the bottom of the car until we passed Berry's car. I passed Berry's car halfway between Lime Kiln Lane and the cut-off bridge on the River Road.

Q. Was there any change made in the position of Mrs. Alice Stoll in that car after you passed Berry Stoll on the River Road?

A. Somewhere in there. I think it was about adjacent to the Louisville light company, some plant over to the right of the River Road, coming this way, she got out of the car and got on the front seat.

Q. You mean the Louisville Water Company?

A. I guess it was the water company—some plant that was on the right toward the river coming this way on the River Road.

Q. And where did she get then?

1134 A. She got on the front seat of the car—of the Ford.

Q. Where did you proceed from there with her on the front seat of the car?

A. I drove towards the Municipal Bridge. I don't recall the streets that I came on unless it was Main or Market, one of those streets.

Q. And did you cross the Municipal Bridge?

A. We did.

Q. During the progress of your trip to the Municipal Bridge did you make any red light stops?

A. Why yes, coming down the Main Streets there I naturally ran into several red lights. Whether they were green or red I couldn't say but they were stop lights.

Q. Well did you make any stops at any red lights if they were red?

A. Well I can't recall that I actually made any stops but in the normal course of driving I am sure that I did make some stops.

Q. When you went across the Municipal Bridge, where was Mrs. Alice Stoll?

A. She was on the front seat of the car.

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Q. Was her mouth taped, or was she gagged in any manner?

1135 A. She was not.

Q. Was she free to talk?

A. She was and she did talk.

Q. Did you stop at the bridge attendant?

A. We stopped at the toll gate and paid the toll fare on the bridge.

Q. Did she make any attempt to call his attention to the fact that she was being kidnapped?

A. No, she did not.

Q. Then what did you do after you passed the Municipal Bridge?

A. Then we went out the highway out through Jeffersonville and as we passed the tourist camp where we had formerly stayed, why some comment was made about it. I don't recall just what the remark was. But she and I made some remark. We later passed through Speed, Indiana, and I made some wisecrack or some kind of a remark about the Speeds, and she seemed to take exceptions to it at that time, and we had a little argument about that. I knew the town of Speed Indiana was where the Cement Company was located that her father owned and as we passed through this town I made some remark about the Speeds and she answered me with some heat—I don't know—we had a little argument about that. I don't recall what it was, or what the words were or anything about it except that.

1136 Q. Now, did you continue on up the road?

A. We did.

Q. Where did you go?

A. We drove to Indianapolis.

Q. What did you do when you got to Indianapolis?

A. We drove into the garage that I had rented back of the apartment.

Q. Did you at any time ever bind her hands after leaving the Municipal Bridge, or leaving her home, for that matter?

A. No; her hands were not bound, nor was she gagged. She had no adhesive tape over her mouth.

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Q. And what did you do when you got to the apartment at Indianapolis?

A. We got out of the car and walked into the apartment.

Q. What did you do after you got into the apartment, you two?

A. Why the kitchen was rather disorderly. We cleaned up the kitchen and she cooked some eggs and made some coffee and we sat down and ate.

Q. Did she make any attempt in any way to get away?

A. She did not.

1137 Q. Tell the jury what happened in point of order or sequence if you can from the time you reached that apartment until she was returned to her home?

A. Well, we were in the apartment for a period of seven days, during the first few days we ate, drank beer, listened to the radio; read the newspapers and had discussions in the living room most of the time. She suggested writing these letters that were exhibited here to Miss McHenry, who was Miss McHenry at that time; and she told me about the slippers that she had bought that Miss McHenry would know.

Q. What kind of beer did you drink? You two?

A. I insisted that we drink Patrick Henry beer.

Q. Well did you drink that brand of beer?

A. That is the only brand we drank.

Q. Where did you procure your groceries and provisions and beer?

A. At what is known as Sam's Subway. It was in a corner of the apartment building, in the basement. It was a delicatessen, lunches.

Q. Now did you go yourself to make these purchases?

A. Yes; I went out several times a day to buy food, buy newspapers—mail these letters.

1138 Q. What did you do with her on those occasions?

A. I left her in the apartment.

Q. I mean, was she bound or tied, or was she running around loose in the apartment?

A. She was never bound until the last two days that

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I was in the apartment. The first 4 days she was never bound or gagged or interfered with in any way.

Q. Do you say that you went out and left her in the apartment alone, free to escape or go where she liked?

A. I sure did.

Q. Where else would you go except to get provisions and beer at Sam's Subway?

A. I droye several blocks to get to grocery stores and get groceries. I drove down town to mail these letters. It seems that I made several phone calls there, one to Miss McHenry, Mrs. Stoll's girl friend.

Q. Had you known Miss McHenry's name before this?

A. No; I didn't.

Q. Did you know her telephone number?

A. I knew it from Mrs. Stoll giving it to me.

Q. Who suggested that you call her?

A. Mrs. Stoll suggested it, because I didn't know Miss McHenry.

Q. Did you ever buy any newspapers while you
1139 were in that apartment?

A. Why, we bought the daily papers.

Q. Did you have a radio in there?

A. We did.

Q. Did you play it?

A. Yes and listened to the news broadcasts on the case.

Q. Did she appear anxious to get away from there for the first few days?

A. Not for the first 3 or 4 days, she didn't.

Q. Just what did she do?

A. Well she seemed to, as far as I know, act perfectly calm and she was not excited, and took it very easy. She took it as a big joke.

Q. Did you ever threaten her with a pistol at any time during that time?

A. No I did not. I never had threatened her with any pistol. When I went into her home my pistol was in the glove compartment of the Ford. And I did not put the pistol on the maid, Mrs. Woolet, at all.

Q. Did you put it on Mrs. Stoll?

A. I did not. I did not have a pistol in the house.

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Q. Did you have a pistol in your apartment at
1140 Indianapolis?

A. Yes, the pistol was in the apartment; it was usually kept under the pillow on the lounge. I kept it under the pillow on the lounge nearly all the time. I didn't carry it in my pocket.

Q. Did she have access to it?

A. Well I could not say whether she knew it was under the pillow or not—I am rather inclined to think she did not know it was there.

Q. Did you ever display it in her presence?

A. No, I don't think there was any occasion to even showing the pistol from the time we got to the apartment to the time I left.

Q. Who cooked the meals during the days you were there?

A. Mrs. Stoll.

Q. Did you have any part in that?

A. Well I naturally helped. I helped with the dishes and did what I could.

Q. Did anybody ever come around the apartment, such as trades-people?

A. Yes, there were salesmen and trades-people and dry cleaners and garbage men and the milk man. The normal run of people who usually come to an apartment.

1141 Q. Well what about the shades, were they down or up?

A. I think the shades were down for most of the time in the living room and the bed room, but one day she suggested that the shades in the living room be raised, and they were raised possibly that much (indicating about a foot) from the bottom of the window.

Q. Did she have full access to the bathroom?

A. At all times.

Q. Did you ever forbid her to close the bathroom door completely?

A. She closed it at all times so far as I know.

Q. Did that bath room door have any lock on it?

A. Yes, it had a regular bath room lock on the inside of the door.

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Q. Will you describe that to the jury so they may know about that?

A. Well it was just the regular lock that you find in most bathrooms. I don't know how to describe it—it had a long plange you turn over—no key. The lock part is all built right into the door.

Q. Was the lock on the inside?

A. It was locked from the inside.

Q. Could she have turned that lock and locked
1142 the door against you?

A. She did turn the lock when she went in there.

Q. Did she ever make any attempt to raise the window or get through the bath room window?

A. Well I don't know whether she ever did or not.

Q. Well, could she have?

A. She could have but I can't say that she did. I know she didn't go out the window.

Q. Now with reference to the windows in that apartment. Take the living room and describe to the jury those windows—how many there were?

A. There were 3 windows in the living room; they were rather close to the floor, and the apartment was on the first floor and it was a very short distance from the ground of the court. It faced on the court of the apartment. There were 3 windows in the bedroom looking out on the walkway and into the windows of the adjacent apartment, but the shades in the bed room were kept down practically at all times so far as I know.

Q. How close was this adjacent apartment that you speak of?

A. Well I don't know. I have heard it stated here in the evidence but my guess would be just what it was said here, 8 feet.

Q. Well, were or not the apartment windows of
1143 the adjacent apartment close to the windows of the bed room of apartment No. 2?

A. Yes, the windows in the opposite apartment were right across the bedroom windows of our apartment.

Q. Could she have attracted the attention of those people in the opposite apartment?

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A. Well if she had wanted to I rather think she could have.

Q. Could she have attracted the attention of the other people who came into the court and used the court walk-way going to those other various apartments in that U-shaped apartment building?

A. Yes, I am sure she could.

Q. Well, did she try to do that?

A. Not to my knowledge.

Q. A letter has been introduced here as having been written by her to Berry Stoll, her husband. Did she write that letter?

A. Yes she did.

Q. Did you order her to write that letter?

A. No I didn't. I didn't order her to write any letters.

Q. Did you order her to write the letter to Miss 1144 McHenry?

A. No I didn't. It was her own idea to write Miss McHenry because I didn't know Miss McHenry existed.

Q. Did you dictate the words of that letter, or any letter?

A. I might have helped make some suggestions in the letter.

Q. Were any writing facilities in that apartment?

A. Yes, sir.

Q. What were they?

A. Well there was a typewriter and paper and pen and all kinds of paper.

Q. Did she write the letter which has been identified as the letter addressed to "Dear Mr. Intermediary?"

A. Yes; she wrote that letter.

Q. Did you order her to write that letter?

A. I did not.

Q. Who was named in the ransom letter that has been identified as the intermediary?

A. My own father.

Q. When did you insert his name?

A. Well I am not sure whether I put that in there—I think I had that in there at all times when I prepared

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the ransom note.

1145 Q. Did you name his street and address in Nashville?

A. I did.

Q. Now back to the apartment in Indianapolis did you continue to bring in newspapers?

A. Yes, I bought papers and brought them all during the seven days we were there.

Q. Did you allow Mrs. Alice Stoll to read those newspapers?

A. She read them all.

Q. Did you keep the radio going all the time?

A. I wouldn't say all the time but we listened to most of the programs and news broad-casts particularly.

Q. Now you left there on October 16th, didn't you?

A. Yes I think it was.

Q. 1934.

A. Yes, 1934.

Q. You were away some 18 months or more, were you not?

A. I think it was 19 months.

Q. And where were you apprehended?

A. In Glendale, California.

1146 Q. Mr. Bugas and other members of the FBI, of course, apprehended you, I believe?

A. That's true.

Q. What did they do with you after your apprehension?

A. I was taken to the Los Angeles Office of the FBI and then rushed to a plane at the Glendale-Burbank Airport. I was transported by plane to Louisville, Kentucky, taken to the Starks Building and held in their detention room until the time I was brought into this court.

Q. How long were you held in the detention room of the FBI in the Starks Building at Louisville?

A. From the morning of May 12th until late afternoon of May 13, 1936.

Q. Were you permitted to see anyone?

A. I was not.

Q. Were you interrogated?

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A. I was interrogated from the time that I was arrested until the time I appeared in this court room in 1936.

Q. Were you brought into this court room right here?

A. It was this court room, I think, but I don't recall it.

Q. How many Agents questioned you from the time you were apprehended?

1147 A. Well they questioned me in relays. There were so many of them I don't know whether they were the same ones over and over or how many. I know it seems like to me there were a great many Agents.

Q. Did they ever relax their questioning of you from the time you were apprehended until the time you were brought into this court room.

A. They questioned me in relays, all day and all night.

Q. Did they allow your mother to see you?

A. They did not—not until the last few minutes before I came to arraignment.

Q. Did you see your father? Or, were you permitted to?

A. I saw him for a few minutes also.

Q. What was his condition?

A. He was very much intoxicated, at the time.

Q. What was the condition of your mother when you saw her?

A. She was hysterical.

Q. Were you allowed to procure any lawyer or counsel?

A. I had no lawyer or counsel, and wasn't allowed to procure any.

1148 Q. What did the FBI men say to you with reference—as to what plea you should enter when you were brought into court?

Mr. Brown: I would like him to identify the FBI Agents by name.

A. Mr. Connelley, I can identify him sitting right there, as one of them.

Q. What did he say to you?

A. He threatened me with the death penalty and told me to plead guilty.

Q. What other Agents advised to plead guilty?

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A. Orville C. Dewey who was then Special Agent in Charge of the Louisville Office.

Q. That was in 1936?

A. Yes.

Q. Do you recall any Agents who so advised you or suggested how you plead?

A. Mr. John Bugas who testified right here in this court. I don't seem to recall any of the other men's names at this time.

Q. Well were you allowed to sleep any from the time the FBI Agents apprehended you?

A. I didn't have any sleep from the time I was arrested at Glendale, California, until I hit the Atlanta
1149 Penitentiary.

Q. And how many hours was that?

A. That was about 2 days time.

Q. Forty-eight hours?

A. Yes, or a little more.

Q. How were you brought into this court room?

A. Shackled and handcuffed.

Q. What do you mean?

A. I mean that I had shackles on my legs and I had handcuffs on my hands and I was shackled to an Agent of the Department of Justice, which one I don't know.

Q. Did any lawyer represent you at that time?

A. I had no lawyer.

Q. At that time had you ever been legally restored to sanity?

A. I had not.

Q. Well, assuming that this is the court room in which you were brought, what time of the day was it?

A. It was around 6 o'clock at night.

Q. Judge Miller was not the judge at that time?

A. No, Judge Miller wasn't the judge. Judge Elwood Hamilton was sitting at that time.

Q. How many words did you say when you were brought into court on that occasion?

A. I said one word.

1150 Q. What was that word?

A. "Guilty".

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Q. What was done with you immediately after you said that one word?

A. I was immediately taken to the train and taken to the Atlanta Penitentiary.

Q. How long did you stay there?

A. I stayed at Atlanta 12 days.

Q. And from there where were you taken?

A. To Leavenworth Penitentiary.

Q. Where is that located?

A. Leavenworth, Kansas.

Q. And how long did you stay in that institution?

A. I stayed in Leavenworth approximately 10 months, and then I was transferred to Alcatraz Island.

Q. And how long did you stay on Alcatraz Island?

A. I stayed at Alcatraz Island for over six and a half years.

Q. And for the purpose of the record and the jury just what is Alcatraz Island?

A. I would say it is America's torture chamber.

Q. Were you disciplined while you were in Alcatraz and these other institutions?

1151 A. No, I never had occasion to violate any of the rules in any of the institutions. I had a 100% record at all three places.

Q. I mean did they have rules and regulations by which you were made to comply?

A. Yes.

Q. And were you—while you were at Alcatraz did you make application for a writ of habeas corpus?

A. After I was in Alcatraz for about 3 years I did make application in the San Francisco Federal Court for a writ of habeas corpus.

Q. Was that immediately granted?

A. No; that was denied and the case was taken to the Circuit Court of Appeals; and it was denied there with a dissenting opinion. It was appealed to the United States Supreme Court. The United States Supreme Court reversed the case to the United States Circuit Court of Appeals, and the Circuit Court of Appeals reversed the case with an enbank decision to the Federal District Court in

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San Francisco and when the case was heard there the United States District Judge for the San Francisco District Court ordered me released from Alcatraz.

Q. Upon what grounds were you released?

Mr. Brown: I think the record of the judgment speaks for itself on that.

1152 The Court: Yes. I do not think it is material in this case anyhow, is it?

Mr. Brown: I don't think it is, Your Honor.

Q. Following your being ordered to be released from Alcatraz, what happened then?

A. I was brought back here by the Marshal for a new trial.

Q. And when were you brought back here?

A. September 28th.

Q. What year?

A. 1943.

Q. And were you then brought before His Honor, Judge Miller, in this court room?

A. Yes.

Q. And what plea to this indictment did you make before him?

A. I entered a plea of not guilty with the advice of counsel.

Q. You had counsel on this time you pleaded but did not on the other occasion. Is that what you mean to say?

A. Yes.

Q. Now, with reference to any money, was any money brought to the apartment in Indianapolis?

A. Yes, there was a sum of \$50,000 brought to the apartment.

1153 Q. What did you do with it?

A. Before I left the apartment I kept half of it. I put it in my suitcase when I left and I left the other half with Mrs. Stoll as by our original agreement.

Q. Half of it?

A. What I took to be half. I didn't count it.

Q. Do you know it was half or are you just—what about that?

A. I wouldn't say that it was exactly \$25,000 but it

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was in the neighborhood of \$25,000.

Q. And who brought that money there?

A. My wife, Mrs. Frances Robinson—my wife at that time.

Q. And who was with Mrs. Alice Stoll at the time you last saw her?

A. My wife.

Q. And you departed that apartment on what date? In what year?

A. October 16, 1934.

1154 Q. I'll show you Defendant's Exhibits 1 through 13, inclusive, and ask you if these photographs and the views shown thereon truly and accurately represents the condition as portrayed in those photographs of and concerning Apartment No. 2 at 2735 North Meridian Street, Indianapolis, Indiana, as of October 10th through the 16th, 1934.

A. Yes, they are.

Q. No. 1 purports to show the court entrances of that apartment in question, does it?

Mr. Brown: Your Honor, haven't we been over all this with Mr. Johnson.

The Court: I thought there was no question between you all that these pictures were correct and it has been explained to the jury just what each one is.

Q. I will ask you to file these as part of your testimony.

Mr. Brown: I believe they are already in evidence.

The Court: Didn't Mr. Johnson file those?

Mr. Hogan: I don't think so, Your Honor.

The Court: They may be filed now if they have not been filed before.

(The said photographs are filed with the record as Defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, respectively.)

1155 Q. Now, I would like for you to take No. 8 exhibit and tell this jury what kind of cabinet that is shown in that photograph.

A. Why, I would say that that is a linen closet, was, in fact, a linen closet at that time.

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Q. And is the bath room door in a closed position shown in that view?

A. Yes, it is.

Q. Does that lock or catch that you describe show on that photograph?

A. That's the same type of lock that was on there at the time when we were in the apartment.

Q. Was there room enough in front of this cabinet for a person of Mrs. Stoll's stature and build to have stood in front of there out of range of anybody who might have had a gun on the other side of that door?

Mr. Brown: I am certainly going to object to that.

The Court: That's a conclusion on the part of the witness. He can tell what space was there, if he wants to.

Q. Suppose you tell what space was there as represented by the space occupied by the linen closet.

A. There was room enough for me behind the cabinet, so there must have been room enough for her.

1156 Mr. Brown: I am going to object to that last statement.

The Court: Objection sustained. That's a conclusion. He can tell how much space was there.

Q. How much space was there?

A. I don't know exactly. I would hazard a guess.

Mr. Brown: We don't want a guess.

Q. Your best recollection of what the width of that cabinet was.

A. I would say about twenty-two inches.

Q. I show you what purports to be a photograph of you taken in former years, or taken at a former time. Do you recognize that?

A. Well, yes, I recognize it as my own picture.

Q. About what year would you say that picture was taken?

A. I think that picture was taken in 1932.

Q. Had there been any material change in your facial appearance or appearance between 1931 and 1932?

Mr. Brown: I am going to object to that. That is certainly one thing a person can't tell, what he looks like.

The Court: He can tell what happened to him if he

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wants to, unless you have some comparison of pictures it would be hard for this witness to tell.

1157 Q. What has happened to you other than the toll of years has taken on you since 1932 or 1931?

A. Well, I would say seven years on Alcatraz doesn't improve your appearance any.

Q. Did you look about like this or did you look like this in the year 1931?

The Court: I thought that was taken in 1932, wasn't it?

Mr. Hogan: I asked him if he looked like this in 1931.

The Court: There was one year's difference.

Mr. Hogan: That's right.

Mr. Brown: How does this witness know what he looked like?

Mr. Hogan: I think he would.

The Court: Of course, you can look in a mirror and see what you look like.

Mr. Hogan: Sure you can.

The Court: The witness can give his opinion for what it is worth.

A. I think I looked approximately the same in 1931 as I looked there in 1932, very little difference.

Mr. Hogan: I will ask that this be filed as Defendant's Exhibit No. 16.

(The said photograph was handed to the reporter and filed with the record as Defendant's Exhibit No. 16.)

1158 The Court: Members of the jury, we will take a short recess at this time. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence.

The Marshal will give us a short recess.

A short recess was taken, after which the hearing was resumed, as follows:

(Mr. Hogan continuing:)

Q. Now, with reference to the time that you and Mrs. Alice Stoll spent in this apartment, how did you spend the time passing the day?

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A. Why, we usually spent the time listening to the radio, as I stated before, and reading the papers, engaging in conversation.

Q. With reference to whether she was rebellious or otherwise, will you tell how she reacted toward that sojourn?

A. Well, I think I stated that she took it more or less as a joke up until the last day or so and she changed her mind.

Q. Did she enter into it with any spirit of rebellion?

A. No, she didn't.

Q. Did you and she do any beer drinking during those seven days?

A. A great deal of the time during that time.

1159 Q. Who would go get the beer?

A. I would.

Q. What brand would that be?

A. As I stated before, that was Patrick Henry brand of beer which I insisted on at that time.

Q. Did you get beer every day or just some days?

A. Every day, several times a day.

Q. Would you get beer at night?

A. Yes.

Q. And would you get other provisions to eat with it?

A. Yes. Sometimes I went to the stores and bought food and other times I would go to the delicatessen which was in the corner of the building of the apartment and buy prepared food.

Q. When you would be gone, what would you do with her?

A. During those first four days she had the free run of the apartment.

Q. Now, you mentioned that towards the last she became otherwise. Now tell the jury about her change in attitude.

A. Why, I think she, along the latter day or so, realized the seriousness of what we were into, and one time she threatened to walk out. I think that was possibly on the fifth or sixth day.

1160 Q. What caused her to change her mind, if you

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know?

A. Possibly it was all the publicity that the case was getting and the news flashes that came over the radio made quite a serious thing out of it, which it really was, of course.

Q. Did she ever at any one time or on occasion drink more than one bottle of beer?

A. She drank several bottles on several different occasions.

Q. How many, would you say?

A. Oh, over a period of time, one drinks beer gradually. I wouldn't know what to say. I would think three or four bottles over a period of time.

Q. After you were brought back to Louisville to stand trial in September of this year, I will ask you to tell the jury whether or not any medical or professional men at the instance of the court made an examination of you to determine your mental status as of this time.

A. Yes, four doctors appointed by this court examined me in the Jefferson County Jail, quite an extensive examination, physical, mental.

Q. And following that do you know whether or not any order was entered in this case—your case?

A. I heard Judge Miller read the findings of
1161 those four doctors to the effect that I am at the present time sane.

Q. Is that entered as an order in this case?

A. I am sure it is.

Mr. Hogan: You may ask him.

Mr. Brown: Your Honor, just for the purposes of the record, a number of my first questions I would like to have a ruling on out of the presence of the jury, and I want to go into some things quite extensively, and not to take any chance on the record I want to ask the questions and ask Your Honor to rule on them out of the presence of the jury. It pertains to 1929, 1934, and also 1926, and I would prefer to do it that way.

The Court: You want to ask them up here at the desk?

Mr. Brown: Yes.

The following proceedings were had at the Judge's desk and out of the hearing of the jury.

Proceedings

Mr. Brown: He testified he did not graduate from the Wallace Preparatory School because he was not able to complete a subject. I am going to ask if the reason he did not graduate, if he did not embezzle funds from the Wallace World of which he was business manager, the school paper of the Preparatory School. Now that's on the insanity, to show that it is the same laying on of some-
 1162 body else.

He testified that by reason of his marriage to Sue Anne Tubbs and his failure to find employment, it worked on his mind and he became insane. I am going to ask him if that insanity hearing don't come as a result of two robbery charges against him in Nashville, Tennessee, and didn't he enter both of those homes, pose as an officer of the law and remove from those homes jewelry to the value of \$9500.00.

Now then, I am going to ask him about, if in line with his purported intimacy with Mrs. Stoll, if immediately prior to this kidnapping in 1934 he didn't commit an offense against three young women, and if he at that time didn't tell the prosecuting attorney, "All right, produce them and let them testify, and I'll smear them."

Now I think that's admissible on two separate theories, one on the insanity theory and the other to show a pattern of crime, and there are some pretty good cases on that. Now, if Your Honor wants to look it up, I would rather adjourn now and look it up because my cross-examination is not going to be extended in any manner of means, if Your Honor has any doubt about it.

The Court: Of course, the usual rule is, you can't show offenses unless they were convictions for felonies. I don't know what exceptions there may be to that rule.

1163 Mr. Hogan: The old Dressler case held—

The Court: You can show former criminal offenses of the same pattern and same type which would bear on the intent, but I don't know that these are the same character—embezzlement.

Mr. Brown: Exactly. He entered two homes, purporting to be an officer, the Stoll homes purporting to be a telephone man, twice by women at those places. And then

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when he is indicted they offer to pay it back and let him go to the asylum rather than the penitentiary. And then the 1934, I think that's admissible under the same theory and under still another theory. In those cases he picked up three young women, one he grabbed and put her in the car, he didn't pick her up, the other two cases he picked them up, he took them to the country, and in one case had attempted to have intercourse with her in an abnormal way, and another instance he took their jewelry away from them and they prosecuted him.

The Court: Unless you have got some cases that hold that way, I couldn't do it. Of course, if you have any authorities that say you can, I will listen to them.

Mr. Brown: All right.

The Court: The general thought would be that other crimes would not be admissible. I suppose we might
1164 as well adjourn for the day.

The following proceedings in the presence of the jury:

The Court: Members of the jury, there is a question which has come up between counsel that will probably take considerable time to be presented by counsel to the Court. Both sides want to be heard on it rather at length, and I think it will take us well beyond the usual adjournment time of 5:00 o'clock for us to hear and discuss this matter to our satisfaction. There is no reason, then, to keep the jury here waiting for us to get through when we won't get through until after the usual time of adjournment. We will adjourn accordingly, so far as the jury is concerned, and I will meet counsel in chambers and continue with the matter that you have presented to me.

During this overnight recess then, do not discuss this matter among yourselves, do not talk about it, the evidence is not all in yet, do not make up your mind on this case one way or the other until the case is through and it is ready to be submitted to you in its entirety. Do not let anyone discuss it with you or in your presence. Avoid contact with anybody that might be interested in the results of this case.

We will recess, then, until 9:30 tomorrow morning.

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A recess was then taken to 9:30 a.m. Tuesday, December 7th, 1943.

1165 Met pursuant to adjournment on Tuesday morning, at 9:30, December 7, 1943, and continued with the further proceedings as follows:

Cross-examination by Mr. Brown.

Q. Now, Mr. Robinson, on the stand yesterday you stated that you felt that the beginning of your mental collapse was the so-called forced marriage you went through in 1927. Am I correct in that statement?

A. That is correct.

Q. Now you were married, were you not, on January 18, 1927 for the first time?

A. Well I don't recall the exact date.

Q. Is that the approximate date?

A. Approximately, yes.

Q. And you testified that that caused you to be ostracized, not by the fellows or the young men, but by girls in Nashville?

A. Why yes, the girls that I had been formerly going with—not so much the young men but if it was a mixed crowd, naturally I was not along.

Q. You felt, and you had the feeling that the responsible citizens of Nashville did not want you, a married man, going around with their unmarried daughters.

1166 Is that the feeling you had?

A. Well the scandal attached to the forced marriage—yes, I think that was it.

Q. And you also said it caused you to leave the law school quickly thereafter?

A. Well after a short time. I think I stayed in the law school for nearly a year thereafter.

Q. And it caused your grades to fall off?

A. I do not recall that I said my grades in law school began to fall off.

Q. Now didn't you say that you left the Vanderbilt law school within a period of six months after this marriage?

A. Well I was only giving the time approximately. I

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am not sure myself just what the period of time was—I couldn't say.

Q. On reflection I will ask you if you did not continue in the Vanderbilt Law School until November 5, 1928, almost two years after this so-called forced marriage?

A. I am sure it was around November in 1928 when I left the law school but as to the date of this marriage, and the final annulment of the marriage, I don't recall the dates on that, no sir.

Q. For the purpose of refreshing your recollection as to the date of that marriage, I will show you a certified copy of your marriage certificate and see if that refreshes your recollection. Now you have carefully refrained from mentioning this young lady's name and I do not intend to mention her name also.

A. (Reading the certified copy of certificate) That is correct.

Q. If that refreshes your recollection, I will ask you to examine that and tell the jury whether that isn't a true copy of your marriage certificate?

A. I accept it as a true copy.

Q. Yes. Well, does it refresh your recollection as to the date of your marriage?

A. It does not refresh my recollection, but I accept that date as being true because I don't really know.

Q. What is that date?

A. January 18, 1927.

Mr. Brown: I would like to file this as Government's Exhibit No. 77.

(The above described document was handed to the Reporter, marked Government Exhibit No. 77, and filed with the Record.)

Q. Now then I will ask you also if, after this so-called forced marriage your grades did not go upward rather than downward in the Vanderbilt law school?

1168 A. Well I think that after that marriage I made a decided effort to overcome it and I think at the time I did probably apply myself to my studies a little harder in an effort to overcome the disgrace of this mar-

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riage at the time. What it had done to me mentally—that is possible, yes, sir.

Q. I will ask you if as a matter of fact, for two full semesters after this marriage you didn't get the following grades: Criminal Law—90. Is that correct.

A. I don't recall the grades. I know that I maintained a high average-through law school.

Q. And the final grade, criminal law—90; property—94; real property—80; agency—72; contracts—72; torts—82; equity jurisdiction—90; domestic relations—80; damages—91; partnership—85; bills and notes—82 at one semester and 82 at another semester; final grade 86; federal jurisdiction—83. Were they approximately your grades that you received after this marriage?

A. Well, I would say that they are.

Q. Now, you testified at length to this insanity. How did it affect you, Mr. Robinson. Was it a veil over your mind that you were not able to dispose of?

A. Well that is a difficult thing to describe.

Q. Well describe it as well as you can with you
1169 please?

A. I think I have already described it to the best of my ability.

Q. You have described it in your direct testimony. Now when did this veil if I can call it a veil or the matter that you described in your direct testimony, when did it lift?

A. Well I did not say that there was any veil or that it was lifted at any certain period. I could not go into that because I don't know. I am not qualified to say that.

Q. You are not qualified to say you are sane or insane?

A. At the present time you mean?

Q. Any time?

A. I think I was at that time.

Q. You think you were at that time. Now when is "that time"?

A. Well from the time that I was adjudicated until several years thereafter.

Q. All right. How many years?

A. I don't know. I couldn't say.

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Q. Well just give us your best judgment Mr. Robinson?

A. Well I think I was of unsound mental condition for several months or possibly years after I was in the penitentiary.

Q. All right, give us the date—your best judgment?

A. I could not give you any one date at which I recovered my sanity?

Q. Well give your best judgment? Give it over a period of time? When did you feel that if before that time you had been suffering from mental illness, when did you begin to realize that you were no longer suffering from a mental illness?

A. The first part of the time, I think, it was possibly the time I was in Alcatraz. I know that in the first three years that I was there I was not able to adjust myself or get my mind on what I was doing. I was bewildered and I was confused at the time, and it was only after I had been at Alcatraz for a period of three years I was ever able to stimulate my thoughts along normal channels.

Q. Do you mean in 1940?

A. Well offhand I would say that.

Q. Well offhand or any way you want to put it, what would you say, 1940?

A. Yes, I would say 1940.

Q. Now as a matter of fact, while you were at Alcatraz didn't you on many occasions go through an act about insanity? Didn't you pretend to be insane when the guards or any officials of the penitentiary were around; when you would hear them coming wouldn't you run to a corner and begin to talk to yourself?

A. That is ridiculous; I did not.

Q. And didn't you, when they left and when you were there with the normal employees of the institution or with the inmates, didn't you return to perfectly normal conduct?

A. There was no such conduct on my part in Alcatraz. If it had there would have been some indications of it by the doctors or by some discipline on the rules from the Deputy Warden probably.

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Q. Now let's return to this adjudication that you have talked about. Now, I believe you testified that you were employed by the Wayne Lumber Company in the spring of 1929, and that it was sometime in June of 1929 that this lunacy hearing was held and you were adjudged a lunatic and sent to the Central State Hospital. Now, am I correct in making that statement?

A. Well I think it was in the fall of 1928 when I was employed by the Wayne Lumber Company.

Q. Now then that you were out of a job immediately prior to the time that you were adjudicated insane?

1172 A. Yes, that is correct.

Q. Now as a matter of fact, didn't you work for the Wayne Lumber Company from January 1929 to June 1929?

A. I did not; that is a mistake.

Q. Now then on January 1, 1929, you married Frances Althausen?

A. Yes, sir, that is correct.

Q. Now when was the child born as a result of that marriage?

A. It was August 31, 1929, when I was in the insane asylum.

Q. Again not a nine months child? Was it a 9 months child?

A. I could not say offhand on that.

Q. Well rapid calculation on your fingers would answer that, wouldn't it?

The Court: When were you married?

Mr. Brown: January 9, 1929. The child was born August 31, 1929.

A. I think the child was somewhat premature.

Q. It was premature in that case. Now as a matter of fact, Mr. Robinson, wasn't this adjudication of insanity a device on the part of yourself and your father and your family—

1173 Mr. Hogan (Interrupting): Now that is objected to. That is a direct attack upon the records of the court itself.

Mr. Brown: It is not.

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The Court: No, I don't think it is an attack. The record stands but it can show any reason that might be behind it.

Q. Wasn't that a device upon the part of yourself and your father and your family to escape criminal prosecution for the robbery of the home of Mrs. C. C. Wagner and Mrs. Mary G. Lamb?

Mr. Hogan: I object to that, if Your Honor please.

The Court: Members of the Jury, the question refers to a possible commission of another offense by this defendant.

Ordinarily evidence of another offense at a prior time is not competent for a jury to consider because the fact that a man may have committed another offense is not evidence that he committed the offense charged. But in certain instances there are exceptions to that rule, and where collateral issues come into play and are before the jury for decision, such evidence may be considered on collateral issues.

Now, the question was asked, and will be permitted to be asked and to be considered by you, and **1174** the answer thereto, with reference to this collateral issue as to any possible motive for the insanity proceedings; and it will be considered by you exclusively on that point, and it will not be received in evidence on any other point; but I will let it be admitted as bearing on that question which was directed to the witness.

Mr. Hogan: Your Honor, I think I should state the basis of my objection. My objection is based upon the ground that it is improper to prove the commission of any prior crime other than the one for which he is on trial.

The Court: The rule which you state is the generally accepted rule which I have just told the jury about and I repeat, there are exceptions to that where that evidence can be introduced bearing on a collateral issue that is before the jury and it will be considered solely as bearing on the question as directed to the witness.

Mr. Hogan: Exception.

Q. Now, I will ask you, Mr. Robinson, if in March, 1929, you went to the home of Mrs. Mary G. Lamb, at that

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time residing at 2413 Jones Avenue in Nashville, Tennessee; that you called at her residence; that you were met at the door by her maid; that you exhibited a badge to the maid, stating that you desired to see Mrs. Lamb; that you
 1175 told Mrs. Lamb that you were a deputy sheriff; that you informed Mrs. Lamb that you wanted to search the house for illegal liquor; that Mrs. Lamb protested your action and desired to call her husband on the telephone; that you denied this request of Mrs. Lamb; and that Mrs. Lamb and her maid were compelled to be seated in the front room while you proceeded with your search; that at the time you entered that house you had a gun in your belt; that you searched the home of Mrs. Lamb, particularly the bed room; that during the time of the search the telephone rang on two separate occasions; that you did not permit Mrs. Lamb to go to the telephone but you instructed the maid to answer and tell the person calling that Mrs. Lamb was too busy to talk; that you on that occasion made a thorough search of the residence; that you did not make a thorough search of the residence but confined your search to the bed room; that upon completing the search you demanded to Mrs. Lamb to know where her car was parked that you demanded of her her keys; and that you ordered Mrs. Lamb and her maid to go to the attic; that you drove away in that car and you took with you the majority of the jewels of Mrs. Lamb and her mother, Mrs. Elmo Love Gee. Is that correct?

A. That is correct in most details. I did not have a gun on my belt and that I went into the house to
 1176 obtain whiskey—

The Court (Interrupting): Is that correct or incorrect?

Witness: I said it was correct in most details except for the gun and that I went into the house for any whiskey that I thought was in there or that was the primary object in going in.

Q. And that thereafter you and your father, Thomas H. Robinson, Sr., requested Mr. Elmo Love Gee, husband of the woman whose jewelry you took and the father of Mrs. Lamb, not to prosecute on those charges, that full

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restitution would be made—

Mr. Hogan (Interrupting): Now that is objected to on the basis of what his father might have done.

Mr. Brown: Well I am asking him if he knows.

The Court: It is just directed to what he knows.

A. I do not recall any statement my father made to Mr. Gee—no.

Q. Were you a Deputy Sheriff at that time?

A. No, I wasn't.

Q. And I will further ask you if that in March in 1929 that you did go to the home of Mrs. Nellie White Wagner at that time residing on Woodlawn Drive, in the City of Nashville, Tennessee; that you represented yourself
 1177 to Mrs. Wagner again to be a Deputy Sheriff; that you exhibited to Mrs. Wagner a fake search warrant; that you told Mrs. Wagner that you were going to search the house for whiskey and that Mrs. Wagner objected; whereupon you seized her forcibly as she was attempting to call her husband over the telephone; that then you locked Mrs. Wagner and her maid in a room; that you searched her house and stole jewelry to the value of several thousand dollars; that while you were searching the house the telephone rang; that you did not permit Mrs. Wagner to answer the telephone but instructed the maid to do so; and that you told the maid to inform the person calling that Mrs. Wagner was too busy to answer the telephone; that at the time you were Mrs. Wagner's home that you demanded to know of Mrs. Wagner concerning certain wires about the premises; and that you were told that one wire led to the servant's telephone; and that the other was an electric wire to the garage. Didn't that happen?

A. There was nothing said about any wires.

Q. Oh, then the only thing that didn't happen—

A. (Interrupting) Everything else is substantially correct, that's true. But nothing was said about any wires or any telephone or anything else.

Q. Now then I will ask you if some months later to-wit, June 1929, you were not identified by Mrs.
 1178 Wagner and Mrs. Lamb as the person who had perpetrated the crime in their homes and, as a result

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of the arrest and indictment, that you, together with members of your family, didn't cook up this insanity scheme to avoid going to the penitentiary?

A. That is not true.

Mr. Hogan: That is objected to.

The Court: The objection on the same ground as before, and the jury will be told again that this evidence is received on the collateral issue which is involved in this case, and not as evidence that he committed the particular crime with which he is charged here; but it can be considered by the jury on the collateral issue which has been raised by the defendant's testimony.

Mr. Hogan: Exception.

Q. I will ask you if in May, 1929, you were not indicted by the Grand Jury of Davidson County, Tennessee, charging, in legal language, the offense that you have heretofore testified about.

A. That's correct.

Q. And if it wasn't after that for the first time that you had this lunacy inquest that you testified about yesterday.

A. Yes, it was subsequent to the offense charged
1179 in that indictment.

Q. The lunacy inquest was.

A. Yes.

The Court: The jury will keep in mind that the evidence as to that indictment is limited to the same issue that I indicated before, not to the main issue as to whether or not this defendant is guilty of the offense charged in this case.

Q. Now then, is it not true that an indictment was returned against you involving, in legal language, the offense that you have testified about that was committed by you at the home of Mrs. Lamb, and wasn't that also prior to the time of the lunacy hearing in the Criminal Division of the Davidson Circuit Court?

A. I thought that was in the same indictment. I may be mistaken.

Q. Well, it was prior.

The Court: The same instructions to the jury on that

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question.

Q. Now then, I will ask you if as a result of these indictments and as a result of the lunacy inquest, you were not committed to the criminal ward of the Central State Hospital.

A. That is correct.

Q. You were not very well pleased there, were you?

1180 A. Why, it wasn't a question of whether I was. My family wasn't. I wasn't getting the proper kind of treatment there.

Q. And you desired to be removed from the criminal ward of Central State Hospital to another ward, did you not?

A. No. I think I wanted to—at least, my father wanted for me to get some fresh air and sunshine and the proper treatment that was indicated for the type of insanity that I had.

Q. Now then, I will ask you—you have testified that there was a second lunacy hearing in the spring of 1930 following which you were transferred to the Western State Hospital at Bolivar, Tennessee.

A. That is correct.

Q. Now, as a matter of fact, Mr. Robinson, weren't the criminal charges nolle prossed against you on the 9th day of May, 1930, and it was a result of that nolle pross that you could no longer be held in the criminal ward, but as a result of that you could demand to be transferred to the Western State Hospital at Bolivar.

Mr. Hogan: Now, he wouldn't know about that.

Mr. Brown: Well, if he does know.

A. Well, the only thing that I recall about that is that the State of Tennessee agreed to nolle pross the criminal charges so that I could receive the proper treatment in another institution, which included fresh
1181 air, sunshine, and exercise, which I wasn't getting in the Central State Hospital.

Q. But you were transferred to the Western State Hospital at Bolivar.

A. I was.

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Q. I'll hand you a letter dated July 1st, 1936, and ask you if you wrote that letter and if that is your signature, and if everything on that letter isn't yours with the exception of the red underscoring which has been added apparently later.

Mr. Hogan: May I see it?

Mr. Brown: Yes, let him identify it. If he doesn't identify it, it won't be used.

A. Why yes, I wrote that letter to Mr. Bates.

(At this point the letter was handed to Mr. Hogan for examination.)

Mr. Hogan: Your Honor, I object to this letter because it is in the nature of a confession or admission, and it is certainly objectionable because he was insane and had been adjudicated insane and had never been restored, and an insane person cannot legally make any statement that is against his interest.

The Court: That's one of the questions in this case, isn't it?

1182 Mr. Hogan: And it has not been brought out as to whether or not any promises were made to him, or if there were, what they were, or whether there were not.

The Court: I imagine the District Attorney will qualify the letter before it is introduced. He will have to, of course. I imagine if it is in the nature you say it is, I haven't read it, I don't know, but it seems to bear, at least, on the issue we have as to whether or not this defendant was sane or insane at that time. For the present I will admit it on that issue. Later it may be admissible on other issues, but it will be limited for the present, at least, along the discussion that we have had on other questions bearing on the issue of the defendant's sanity.

Q. You wrote this letter to Mr. Bates yourself.

A. I did, at the suggestion of the Warden of Leavenworth Penitentiary.

Mr. Brown: I would like to read this letter to the jury: "July 1st, 1936. Dear Mr. Bates."

Mr. Hogan: He hasn't yet qualified it, as to whether or not—

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The Court: All right. Ask him further questions, Mr. Brown.

Q. Mr. Robinson, didn't you communicate with Mr. Bates without any solicitation from Mr. Bates, and if Mr. Bates at that time wasn't the Director of the Bureau
 1183 of Prisons, and I will ask you further if you didn't communicate with him of your own free will and accord, attempting to gain the privileges and concessions outlined in this letter.

A. That letter, as I stated before, was written at the suggestion of Warden Zerbst at Leavenworth Penitentiary and the prison psychiatrist who at that time—I don't recall his name—he was the psychiatrist at Leavenworth.

Q. Dr. Singleton?

A. If I may be permitted to explain the circumstances surrounding that, I would be glad to.

Mr. Brown: I submit it is certainly competent.

Mr. Hogan: Now wait a minute. Let's see here. He said it was written at the suggestion of Warden Zerbst.

The Court: You were not required to write it, forced or made to write it, were you?

The Witness: I wasn't physically forced, Your Honor, but there were some inducements held out to me.

The Court: What inducements?

The Witness: I was at that time held in what is known as isolation in the Leavenworth Penitentiary, and Warden Zerbst called me in his office and told me that as long as there was a question as to my insanity he couldn't take me out of isolation and give me a job in the regular run of the penitentiary, and he suggested that I write to the

Director of the Federal Bureau of Prisons at Wash-
 1184 ington, who was then Mr. Bates, and explain to him—explain away this insanity angle in my case, and I did that and did everything in my power to convince Mr. Bates that I wasn't insane. Naturally, I wanted to overcome that stigma of insanity myself, it had always been a thing of disgrace to me and I wasn't—

The Court: Well, at that time you did it because you wanted to do it, didn't you?

The Witness: Yes, I wanted to get out of isolation

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and go to work in the penitentiary like the rest of them did.

Mr. Brown: I submit the letter is competent.

Mr. Hogan: Could you have gotten out of isolation if you hadn't written that letter?

The Witness: Warden Zerbst stated that as long as there was any issue—

The Court: Now just a minute. We are getting into hearsay again, what Warden Zerbst said.

Mr. Hogan: It is certainly bearing on the issue—

The Court: I don't care what it is bearing on. It is hearsay. We have been keeping hearsay out.

Mr. Hogan: Well, if Your Honor please—

The Court: All through the trial of this case, Mr. Hogan, you have objected every time the Govern-
 1185 ment tried to get in hearsay testimony.

Mr. Hogan: I certainly did.

The Court: And the rule has been applied at your instance, and it is going to be applied in this instance, too. Hearsay, if it is inadmissible on the Government's part, it is inadmissible on your part.

Mr. Hogan: I think what we should do then, is not to have this evidence before the jury and let's have the question of the—

The Court: I can't hear hearsay evidence any more than the jury can hear it.

Mr. Hogan: No, but I mean as to whether this letter was written voluntarily or with some hope or promise of reward or immunity, because that bears directly upon whether a statement of any kind—

The Court: I think the witness has testified that he wrote it because he wanted to change his condition. You were not promised any monetary reward of any kind, were you?

The Witness: No, but I was promised this, that the prison psychiatrist, who as he said was Dr. Singleton, at that time told me that as long as there was any question as to my insanity I would never make parole.

The Court: You were doing it to clear up the question of your sanity, weren't you?

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1186 The Witness: Well, I was attempting to show that I wasn't insane because I wanted to make parole, and I also wanted to get out and go to work.

Mr. Hogan: If Your Honor please, I suggest that that's the hope they held out to him.

The Court: Objection overruled.

Mr. Hogan: Exception, please.

The Court: I am telling the jury that I am admitting it at the present time as bearing on the defendant's sanity or insanity, not to be considered at the present time on any other issue.

Mr. Brown (Reading):

"Leavenworth, Kansas, July 1st, 1936.

Dear Mr. Bates:

Up until now I was not familiar with the fact that letters to your office should be sealed. I have previously written both your office and the Attorney-General's office in the hope that you would review my case and find circumstances therein that would justify you in allowing me to remain in an institution nearer home rather than be sent to Alcatraz. Mr. Bates, I have only one thought in mind for a year or more, namely, if I were apprehended that I would offer no resistance, that I would go back and take my sentence like a man, do my best to merit clemency at sometime or other,

1187 maintain the new hold I have on life and be able some day to start again all over with the girl whom I love and whose actions since my apprehension should convince anyone that she loves me dearly.

I have worked for various companies since I was fourteen years of age. This is my first conviction, and I have never associated with the underworld in any sense of the word. I understand that you are deeply interested in reform movements, and sincerely so, I am sure. I have this in mind. I am finished altogether with crime of any kind. The methods the Department of Justice used in my apprehension convinces me that it is impossible to beat the law. Figures will

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hear out the fact that crime does not pay.

Mr. Bates, among my effects in Glendale, California, was a manuscript of a book I was writing previous to my crime. It was, 'The Getting of a Job, a Science.' I have studied that problem carefully and am well informed on it. I would like to do this. Establish a placement bureau or at least teach a class here in the ways and means of getting a job. I believe I could help direct an inmate's efforts, once he is released, along certain well defined lines that would help him get a job. Most men are at a loss as to how proceed to get employment. I believe such a plan would succeed somewhat to cut down the number of parolees who resort to crime again because of lack of employment.

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I would appreciate this or some similar opportunity to get into some constructive employment. I give my solemn promise that I will not abuse any privileges extended me.

For your information, I would like to state this, that I am not a mental case, I have no psychosis, and that former decree of insanity was the result of my father imposing on his friendships. Also, I did not pose as a woman except on an occasion in Nashville as a disguise. I have no abnormal or homosexual tendencies, and am perfectly normal in that respect.

I am very grateful for the opportunity I had of again seeing my mother and the girl I previously mentioned. Mr. Bates, she means everything to me. She has done more to help my return to normal living and thinking than anyone else. She is working in my behalf now, and it is to her that I will go to if and when I am released.

I am conscious of the fact that I am requesting a lot, but I would like and so would she to have her name put on my correspondence list so that we may write one another and that she may visit me. I am to be immediately divorced from my present wife as we have long since ceased to mean anything to each other. My whole peace and happiness lies with this

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girl. This request to see her and to write her is unusual and must be referred to you, but so also are the circumstances in respect to her. May I have an expression from you?

Yours sincerely,

Thomas H. Robinson, Jr."

Q. Now, the girl to whom you were referring was the woman that has been previously testified to and identified in this direct testimony as Jean Breese, is it not?

A. That is correct.

Mr. Brown: I would like to introduce this as Government Exhibit No. 78.

(The letter referred to was handed to the reporter and filed with the record as Government Exhibit No. 78.)

Q. Now, Mr. Robinson, after your release from the Western State Hospital at Bolivar, Tennessee, I will ask you if you were not employed for a period of eleven days by the Serval, Incorporated, and ask you if you were not employed from May 19th, 1931, to June 1st, 1931.

A. I have received that information also, but it was a mistake. I only worked there for one day.

Q. Now then, you were employed, as you testified, at the Stoll Oil Company here in the City of Louisville.

A. That's correct.

Q. Was that employment approximately from
1190 June 1st, 1931, to July 15th, 1931, but as a matter of fact you left on July 10th, 1931?

A. I am not positive as to those dates. I know it was June and parts of July. I couldn't say for sure.

Q. Now then, I will ask you if immediately thereafter you were not employed by the Mutual Life Insurance Company, as a collector, from July 11th, 1931, to September 12th, 1931.

A. I think those dates are correct.

Q. And at that time I will ask you if you did not reside at 175 N. Keats Street, here in the city of Louisville.

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A. Keats Street?

Q. K-e-a-t-s Street—Keats Avenue.

A. Yes. If that is in Crescent Hill, I think that was probably where I resided.

Q. Now, I'll show you a blank on the Meffert Equipment Company, signed "Thomas H. Robinson, Jr.," dated July 8th, 1931, and ask you to examine that and tell the jury whether that doesn't cover the purchase of the Corona typewriter.

A. Yes. That's my signature, I believe, that must be correct.

Mr. Brown: I would like to introduce this into evidence as Government Exhibit No. 79.

(The order blank referred to was handed to the reporter and filed as Government Exhibit No. 79.)

1191 The Court: What is the date of that?

Mr. Brown: July 8th, 1931.

The Court: Did you buy a typewriter at that time, Robinson?

The Witness: Yes, sir.

The Court: From the Meffert Equipment Company?

The Witness: Yes, sir.

The Court: What kind was it?

The Witness: I am sure it was a Corona.

The Court: Corona portable?

The Witness: Yes, sir.

Q. Pica type, style and number V5A05229 according to that.

A. Well, I wouldn't recall.

Q. I mean according to that statement.

The Court: Is that the same typewriter that was in the apartment on Meridian Street when you left there?

The Witness: Yes, sir.

The Court: Is that the typewriter you used in writing the note?

The Witness: Yes, sir.

The Court: I was referring to the ransom note.

The Witness: Yes, sir, that's correct.

Q. Now then, Mr. Robinson, I will ask you if imme-

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diately after your employment with the Mutual Life Insurance Company, you did not return to Nashville, Tennessee, and get a job soliciting with the Andrew Jackson University, Nashville, Tennessee, which was a business school, that you solicited for that school, you received your first commission check dated August 25th, 1932, and that you remained in that to October 22nd, 1932. Are those dates approximately correct?

A. I think they are, yes.

Q. Now then, I will ask you if immediately thereafter, for a period of at least two months, you were not employed by the A. B. C. Corporation, Winettka, Illinois, selling oil burners.

A. That's correct.

Q. That you left that employ of your own volition.

A. I did.

Q. That then, immediately thereafter, with the interval of a few days, you were not employed as maintenance man in the Mar-Main Arms Apartment, South Bend, Indiana, and that your wife was employed as housekeeper and telephone operator, and this employment did not last from January 1st, 1933 to April 1st, 1933.

A. That is correct.

Q. After you left the employ of the Mar-Main Arms Apartment, did you remain in Chicago or return to your home in Nashville?

A. The Mar-Main Arms was in South Bend.

1193 Q. I mean South Bend, and return to your home in Nashville.

A. I went to Chicago from South Bend.

Q. Did you work at any place in Chicago?

A. No.

Q. During the period of April 1st, 1933, up until August 27th, 1933, when you took an examination with the Tennessee Valley Authority?

A. I am sure I had no employment in Chicago during that period.

Q. Now then, Mr. Robinson, on August 27th, 1933, I will ask you if you did not file an application from and took an examination for a position with the Tennessee Val-

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ley Authority, the headquarters of which were in Knoxville, Tennessee.

A. I did.

Q. Now, in connection with that employment, I will ask you if it wasn't necessary and you did submit to the Tennessee Valley Authority, letters of recommendation.

A. Yes, I did.

Q. I will ask you further, Mr. Robinson, in response to your question yesterday by your counsel that someone told you or you fancied that Mr. C. C. Stoll was giving you a bad name, that you did solicit and receive from Mr. C. C. Stoll a letter of recommendation addressed to the Tennessee Valley Authority.

1194 A. Yes, I had—wait just a moment, I had a letter addressed to me personally. The letter wasn't addressed to the Tennessee Valley Authority that I know of.

Q. Well, let's examine this letter and see about that. (File handed the witness for examination.)

A. Well, it is possible. I never have seen that letter previous to this, but I am sure it is all right.

Q. You solicited a letter of recommendation to the Tennessee Valley Authority from Mr. C. C. Stoll, did you not?

A. I don't recall it if I did. Possibly I did. I think I gave his name as reference when I made out the application to the Tennessee Valley Authority.

Q. Is that letterhead written on any particular firm stationery?

A. This letter is written on the stationery of the Stoll Refining Company.

Q. Whom is it signed by?

A. Signed by Mr. C. C. Stoll.

Q. About what person is that letter?

A. It is concerning a recommendation for myself.

Q. Examine that letter carefully and find out whether Mr. Stoll implies or says anything in that letter detrimental to you?

A. No, he does not. He gives me a good recommendation.

1195 Mr. Brown: I would like to read that letter:

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"Mr. L. C. Richey, Director
Tennessee Valley Authority.
Knoxville, Tennessee.

October 21, 1933

Dear Sir:

Replying to your letter of the 19th inst. concerning Thomas Henry Robinson, Jr. for a position.

I have known him for a brief period, probably two months. Having known his father many years ago in Nashville, Tennessee, he was brought to my office about two years ago for a position with our company and was employed in our service station department at one of our service stations. We found him attentive, willing and honest. He, however, was offered a position which was more promising and left us after this brief spell. Naturally, my ability to help you is rather limited.

He has a striking personality, impressed me as being intelligent, keen and willing, I think, to work hard to make a success of anything he undertakes. This general statement I think covers as much as I am able to say in his case.

Yours truly,

C. C. Stoll."

Q. You took that examination, did you not?

A. I did.

1196 Q. The examination was divided into three parts, was it not?

A. I don't recall the extent of the examination.

Q. I will ask you if you didn't receive a very high grade on that examination.

A. I was later informed that I made 91 on it, I think, or 90.

Q. I will ask you if the examination was not divided into three sections, that on the first section, "Mechanical Aptitude," you obtained a grade of 95; that on the second section, designated "Non-language Test," you received a grade of 91; and on the third section, "General Ability Test," you received a grade of 100; and that your average

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grade for the three sections was 91 per cent.

A. I don't recall those grades. I never have received any confirmation of that other than what my father told me.

The Court: Mr. Robinson, did you get a letter from Mr. C. C. Stoll, yourself, in addition to the one which Mr. Brown has referred to?

The Witness: Previously I had asked Mr. Stoll for a letter of recommendation myself, personally, and I kept that on file.

The Court: That was addressed to you personally and reached you personally?

1197 The Witness: Yes, sir.

The Court: Was it a favorable letter?

The Witness: Yes, it was.

Q. Now, directing our attention to the early part of 1934, what time did you leave Nashville in the early part of 1934?

A. Why, in the early part of 1934 I was employed at Nashville by Du Pont.

Q. At their plant at Old Hickory, Tennessee?

A. That's right.

Q. At that time, was your immediate superior John Ward?

A. That's correct.

Q. Is that the same man whose name you assumed in various places thereafter?

A. It was, but why I did it I don't know.

Q. You registered at the Tyler Hotel on two different occasions under that name?

A. I think I did.

Q. And I believe you obtained that car from Mr. Saunders under that name?

A. I think that's right.

Q. Why did you do that?

A. I couldn't tell you. I don't know.

Q. Have no idea?

1198 A. No idea at all.

Q. Immediately prior to this kidnapping, for a period of a month and a half or two months, you began to

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assume other persons' identity?

A. I didn't understand that.

Q. Well, you lived at Mr. Leach's home in Chicago from June to August 18th, you and your wife, did you not?

A. 1934?

Q. Yes.

A. Yes.

Q. And you worked at the Forsythe Building during 1934, did you not?

A. In my right name, though.

Q. In your right name.

A. At the Forsythe Building, yes.

Q. And at Mr. Leach's home you used your right name.

A. In Oak Park?

Q. Yes.

A. Yes, I think I did.

Q. Now then, in August of 1934, you began to change your name, did you not?

A. I think I changed my name when I moved to Magnolia Avenue in Chicago.

Q. What name did you use there?

A. I don't recall that.

1199 Q. You mean you have had so many changes of names you can't recall any of them?

A. No, I just don't recall that one name. I know it wasn't my name, but I can't recall it at the present moment.

The Court: What was that date? You asked him one date and he didn't give a direct answer.

Q. In August of 1934 is when you moved to the apartment on Magnolia Avenue?

A. I think that's correct.

Q. Mr. Marion Hill, the assistant manager was here, and he testified he was the assistant manager of that apartment.

A. Yes, I recognized Mr. Hill.

Q. Didn't you use the name of John Ward there?

A. It is possible.

Q. You have no independent recollection of that?

A. No, I don't.

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Q. There, for the first time, you changed your name, isn't that right?

A. I think that's right.

Q. Why?

A. I couldn't say. I don't know.

Q. At this time you can't recall any reason to give the jury why, in August of 1934, a month and a half
1200 prior to this kidnapping, you began to change your names?

A. Well, at that time I know I was seeking employment all over Chicago, and it was at that period that I began to feel that Mr. Stoll was giving me a bad recommendation, although I had his letter of reference with me that I would show employers, they checked up, and I felt that Mr. Stoll was giving me a bad recommendation. It looks like every place I went it was Mr. Stoll, he was here blocking me on this job, blocking me on that job. I felt, I don't know, just the same as if I were pursued by him.

Q. That's when the mists began to descend on your mind?

A. Oh, I don't know anything about any mists descending on my mind, no.

Q. You didn't seem to be as clear minded as you had been before?

A. I don't recall. I couldn't say.

Q. Now, relative to your mental state in 1933, what was your mental state then with reference to 1934?

The Court: You mean a comparison?

Mr. Brown: Yes.

A. It is hard for me to say. I couldn't say what difference existed in my mind between 1933 and 1934. It all seemed like a nightmare to me, 1933 and 1934.

Q. How about 1932, the same nightmare?

1201 A. I don't know.

Q. Compare, for the benefit of the jury, your mental feelings toward Mr. Stoll or anyone else in 1934 with any other year you want to pick out. Say 1930.

A. Well, I didn't know Mr. Stoll in 1930.

Q. Well, say 1931?

A. Well, I don't think I entertained any ideas about

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Mr. Stoll when I was working for him in 1931. I think we got along very well.

Q. Any ideas on any subject? You described in 1934 how this change came over your mind, manifesting itself in changing your identity or concealing your identity under another name. Now I want you, for the benefit of the jury, to tell the jury what changes occurred in 1934 that were not present in 1931, 1932, 1933, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942 and 1943, up to date.

A. I am not able to diagnose my own case, Mr. Brown. I couldn't say that.

Q. Can you give us any fact in any one year or anything that would make you different today than you were from 1929 to 1934?

A. I know that when I got out of the insane asylum that my object was to get away from Nashville, I felt an impelling urge to get out of that town, run away from that disgrace, that stigma of insanity that was over me
1202 at that time, I wanted to try to live it down and get in some other town. I did come to Louisville and worked here, but I always felt like that record, insanity record and forced marriage, was catching up with me.

Q. Did you have a feeling of guilt?

A. Well, it wasn't a feeling of guilt so much as a feeling, probably built up a sense of inferiority, I think.

Q. No remorse?

A. I don't know that I felt any remorse. I felt like that I had been rather badly dealt with.

Q. You mean in comparison with Mrs. Lamb and Mrs. Wagner, you felt you were badly dealt with?

A. Now that's relative. I wouldn't know how to answer that.

Q. But you went back to Nashville, even after this feeling, whatever kind of feeling you had, you returned to Nashville many occasions after that?

A. I went to Nashville because I was broke. I had to go to Nashville.

Q. And in the early part of 1934 you left Nashville, did you not?

A. No. As I stated before, I was working at the Du-

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Pont in Nashville up until May of 1934.

Q. Well, you left then?

A. I was discharged from the employ of Du Pont in May of 1934. If you would like for me to explain the circumstances under which I was discharged, I would be glad to.

Q. Well, if you want to give them, it is quite all right with me.

A. At that time I was arrested, at least a warrant was sworn out for me, charging that I had robbed a young woman of a diamond ring to the value of \$90.00, and that warrant was served on me at my home, and the warrant charged that I had taken her out at 2:30 in the afternoon on Tuesday afternoon, I don't recall the date, and it was necessary in order for me to defend myself on that charge of robbery to bring in the accountant of the Du Pont with whom I was working, with my records, and the records of Du Pont, to show that I was working sixteen miles away on that afternoon of Tuesday. And when the accountant from Du Pont brought that record in, my previous insanity record was disclosed to him, which he didn't know before that, and when he went back he referred the matter to this Mr. Ward, and Mr. Ward got out the application of the National Surety Company who had bonded me, and in that application I had never made any statement about the insanity record or having been arrested before, and Mr. Ward said that he would have to temporarily suspend me from employment of Du Pont until I could make arrangements with the Surety Company, that I had made a misstatement in my bond application.

1204 Q. Now, as a matter of fact, didn't Mr. Ward offer you another job where you would not be under bond?

A. No, he did not. He couldn't—

Q. Not that he could not, but did he?

A. No, he did not.

Mr. Hogan: Now he may explain.

Mr. Brown: Certainly he may explain.

The Court: Go ahead, make any explanation you want.

The Witness: In making this bond with the National

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Surety Company when I was working with Du Pont, I had to naturally state in that bond application as to whether I had any previous record or been convicted of any felonies, and I had stated no, that I had never been in any institution, where as a matter of fact I had been in the insane asylum as a result of that former criminal indictment, and Mr. Ward wouldn't give me employment until I had made satisfactory arrangements with the Surety Company which I couldn't do.

Q. How long did you remain in Nashville after that?

A. Oh, a very short time.

Q. Why did you leave?

A. You know why I left, Mr. Brown?

Q. Tell the jury why you left.

A. I left Nashville because another false charge of robbery was put on me.

1205 Q. All right, tell the jury about that.

A. One right on top the other—

Q. (Interrupting) Man or woman?

A. It was a woman.

Q. All right, tell the jury about it.

A. This woman came to my home one night with a deputy sheriff with a warrant charging I had robbed her of the sum of \$8.00 or something. She was a woman known to me as a prostitute in Nashville, Tennessee. And she and this girl who had previously charged me with robbery at 2:30 on the afternoon when I was working at Du Pont, were friends, and I had met both of them at a night club where there was gambling in Nashville, and this one girl had gone broke when she was shooting dice on a table and offered me a ring which I loaned her some money on, about ten or fifteen dollars, and she wanted me to hold it for her for one week or two weeks, I don't recall which, what the period was, and I held it for approximately a month and sold it and she later called me up and wanted the ring back and I couldn't give it to her. Then she made demands on me for money, stated that this private detective had given her the ring and he was wondering what she had done with it and she couldn't make any explanation to him what became of the ring, she and this other girl were both

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going with this private detective, and he attempted
 1206 to put a little pressure on me to get the ring or repay
 the money, and I wasn't able to do it. I didn't
 have the amount of money myself. As a result this first
 girl charged me with robbing her of the ring which was
 proved by the magistrate as being a false charge because
 I was working at Du Pont on the day she claims I took
 the ring from her.

Q. Why did you leave Nashville?

A. I left Nashville because this second girl, who was
 a friend of the first, came out with a warrant charging
 me with robbery again, the sum of \$8.00. I jumped out the
 window, the two deputy sheriffs were in my house, and
 went to my wife's home or in-law's home, from there to
 Chicago.

Q. You mean when the deputy sheriffs came to arrest
 you, you jumped out of the back window and left for
 Chicago?

A. I sure did.

Q. Now I will ask you, if about that time, in 1934, in
 connection with the offenses that you have testified about,
 you did not make the statement to Mr. Richard N. Attkis-
 son, who was then District Attorney General of Davidson
 County and the prosecutor of Davidson County, Davidson
 County, Tennessee, that "Let those women testify against
 me and I will smear them all over the paper of Nashville."
 Didn't you make that statement to Mr. Attkisson?

A. I made no such statement as that, no.

Q. In words and substance didn't you state
 1207 that to Mr. Attkisson?

A. I do not recall ever making any such state-
 ment to Mr. Richard Attkisson.

Q. When you say you do not recall it, you mean you
 didn't make it?

A. I am sure I didn't.

Mr. Brown: Your Honor, if we are going to take a
 recess, I would like to take it at this time.

The Court: All right. Members of the jury, we will
 take a short recess at this time.

Do not discuss the matter among yourselves or with

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anyone, or permit anyone to talk about it in your presence.

Mr. Marshal, announce a short recess.

A short recess was here taken, after which the hearing was resumed as follows:

Cross-examination of Thomas H. Robinson, Jr., continued by Mr. Brown, as follows:

1208 Q. Now, Mr. Robinson, directing your attention to the final part of your stay in Indianapolis, your wife arrived, Mrs. Frances Robinson, arrived with the ransom money, didn't she?

A. That is correct, yes.

Q. And at that time there were \$50,000 in the ransom money?

A. I think there was. I didn't count it, but I am sure it was \$50,000.

Q. How was that ransom money made up?

A. As I recall it, it was in packs of, say, \$50 to a pack. Bank wrappers were around each package of bills.

Q. And were they fives, tens or twenties?

A. Yes.

Q. Wrapped separately?

A. Yes they were all separate from each other. That is the fives were wrapped separately. I don't say that the fives, tens and twenties were in the package separately. But they were wrapped separately.

Q. And wasn't each denomination of bills wrapped separately?

A. No.

Q. Of your recollection of the ransom money, that isn't true?

1209 A. I don't recall it if it is.

Q. Now you spoke of some provision of the ransom money—\$25,000 to you and \$25,000 to Mrs. Stoll. Your wife of course was there in the apartment, was she not?

A. Yes, she was in the apartment.

Q. And you undid the ransom money at that time?

A. Yes.

Q. And being a careful and prudent person you counted the money at that time?

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A. No, I never counted the money.

Q. You took Mr. Speed's word for it that there was \$50,000 in there?

A. I must have. I didn't count the money in the apartment, I know that.

Q. How did you make the division if you didn't count the money?

A. It was in a brown paper bundle, and I broke the bundle open and counted out approximately \$25,000 and put it on the sofa and the remaining which was in a brown paper package in my suitcase.

Q. I thought you just said you didn't count the money?

A. The main part of it I didn't count. I counted out what I thought was \$25,000 but the money that was in the package I didn't even disturb. I didn't even take
1210 it out of the package.

Q. What did you count it out in—what bills did you give her?

A. I don't recall.

Q. Now, you have a recollection of that I am sure.

A. There were fives, tens and twenties in the package and I don't—

Q. (Interrupting) Well did you give Mrs. Stoll five dollar bills? Or ten dollar bills? Or twenty dollar bills?

A. I would say offhand it was a mixture.

Q. Of what proportion? Do you recall how many twenty dollar bills you gave her?

A. I don't recall how many of each there were. No.

Q. But you counted approximately or actually one-half. Is that correct?

A. I think it was actually one-half, yes.

Q. You wanted a fair division of the spoils?

A. I had agreed upon that before.

Q. And you were anxious to carry out your agreement, of course?

A. Well I did carry it out.

Q. Now what size package did this \$25,000 make?

A. As I recall it was a package about this long
1211 —(indicating).

Q. Well do you mean this long (indicating),

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or are you getting shorter?

Court: Give it in inches or feet, if you can?

Witness: Possibly 14 inches long by the width of two bills wide—I know that. You know what a bill is, I don't know the length of a bill.

Q. Well, you can approximate it? You saw 25,000 of them, didn't you? That wide?

A. I meant the length of the bill. The package was composed of bills I think there were two sets of bills in the package, and the package was as wide as two bills are long.

Q. And the entire package was about 14 inches long, would you say?

A. I think about that.

Q. And about 6 inches wide?

A. No, it was wider than that.

Q. Wider than this? About 8 inches?

A. Probably about 8 inches or 9 inches.

Q. Now you, of course, had this discussion of this division with your wife and Mrs. Stoll?

A. Not with my wife. I never had any discussion with her about it.

Q. Where was your wife while this discussion
1212 was going on?

A. I think at the time she was preparing something to eat for Mrs. Stoll in the kitchen of the apartment. I know she got Mrs. Stoll a glass of milk.

Q. A glass of milk?

A. Yes.

Q. How long did it take you to count out the \$25,000.00?

A. Why I couldn't say.

Q. Do you mean it took you about the same length of time as it took your wife to go to the kitchen and get a glass of milk in a three-room apartment?

A. No, I didn't say that. I said my wife went into the kitchen and prepared some food and a glass of milk.

Q. Oh, food. Well, what food did she prepare?

A. I couldn't say—I don't know.

Q. Well you certainly would remember what your wife and Mrs. Stoll and you ate?

A. I did not eat.

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Q. All right what did they eat?

A. All I remember is that I saw her eating when I left there. She was eating some manner of food; I don't remember what it was—eggs, bacon and she had a glass of milk, I know.

1213 Q. Steak?

A. She had a glass of milk.

Q. Sirloin steak, or anything like that?

A. I don't know.

Q. It didn't take any length of time to prepare it, did it?

A. I couldn't say.

Q. What sized package did this so-called \$25,000 make?

A. The remainder that I had?

Q. Yes?

A. It made a package half the size of the original package.

Q. Where did Mrs. Stoll take that package?

A. Well I don't know. I left the apartment.

Q. Where was the money?

A. What money?

Q. Well that is what I want to know—what money?

A. I told you that I left \$25,000 of it there on the sofa.

Q. Your wife was in there, of course?

A. Well she was in there later, I know that. I know at the time I counted the money out she was in the kitchen of the apartment.

1214 Q. And the money was left on the sofa?

A. Yes.

Q. You didn't see Mrs. Stoll pick it up?

A. No I didn't see her.

Q. And your wife came back before you left into the living room?

A. Yes.

Q. And was the money there on the sofa?

A. I suppose it was.

Q. Spread out like that?

A. Well I don't know whether it was spread out or stacked up or how it was.

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Q. It made a right sizeable pile of money, did it not?

A. Yes.

Q. You would have no difficulty in distinguishing between \$25,000 and \$1.00, would you? Or \$10,000.

A. No, sir.

Q. Or \$470.00 would you?

A. No, not a bit.

Q. Now you gave your wife a portion of the ransom money, didn't you?

A. I gave her a package of it, I think, a part of the package in order to get Mrs. Stoll home.

Q. Well Mrs. Stoll didn't need any money, did she, to get home? She had \$25,000.

A. Well I gave it to my wife for that purpose—to meet my wife's own personal needs.

Q. Well you—

A. (Interrupting) My wife had given me everything she had.

Q. Well you told the jury you gave your wife money to get Mrs. Stoll home?

A. My wife needed money to get home.

Q. But you just said you gave it to your wife to get Mrs. Stoll home. Did Mrs. Stoll need any money to get home?

A. I don't suppose she did, but my wife did.

Q. Now you have subpoenaed your wife here to testify, didn't you?

A. Yes I have.

Q. And she of course knows all about that \$25,000 spread out on that divan, doesn't she?

A. I couldn't say. I have never talked to my wife since that day.

Q. Well your lawyers have, haven't they?

A. I can't answer that. I suppose they have.

Q. You know they have?

A. Oh yes, I am sure they have.

1216 Q. And your contention now is that you divided the \$50,000 up into two packages of \$25,000 each; that you left this \$25,000 spread out on the divan; that your wife was there in the living room when you left the

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apartment; that you didn't see Mrs. Stoll pick up that money, but that you had theretofore made an agreement with Mrs. Stoll to share the ransom money to the extent of \$25,000. Now is my statement correct?

A. That is substantially correct except for the fact that I don't recall the \$25,000 that I took out first being spread on the lounge.

Q. Well you said you counted it?

A. It might have been stacked up. But I don't think it was spread out on the lounge.

Q. Well you counted it, didn't you?

A. I did.

Q. You put it on the lounge or the divan—whichever you want to call it?

A. Yes, I did.

Q. You did not see Mrs. Stoll pick it up?

A. I could not say that I saw her pick it up—

Q. (Interrupting) Well did your wife get the \$25,000?

A. Not that I know of. I don't know what be-
1217 came of it.

Q. Well you don't know that Mrs. Stoll got \$25,000, do you?

A. Well I know that I gave it to her.

Q. I thought you said you put it on the divan?

A. In her presence I took it out and put it on the lounge, in her presence, with the understanding that it was for her.

Q. It was also in the presence of your wife that the money was on the divan?

A. Well I couldn't say.

Q. You have no recollection of that?

A. I left the apartment immediately.

Q. Well then you don't know whether your wife or Mrs. Stoll got it, do you?

A. I can't say she got it, no.

Q. Well. And \$25,000 makes a right heavy package, doesn't it?

A. I wouldn't say heavy. My wife carried \$50,000 and it wasn't so very heavy.

Q. Did she carry it concealed about her person?

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A. I don't know how she carried it. I didn't see her carry it but I am sure she did not carry it concealed about her person.

Q. She didn't have it inside of her dress, did she?
1218

A. I don't know.

Q. She didn't have it in the top of her stocking, did she?

A. When I saw her she had it in a bundle at the back door.

Q. In a bundle, carrying it in her hand?

A. At the back door.

Q. And then you left that apartment and started on your way?

A. That's correct.

Q. And your way led back and forth across the continent at least twice?

A. No, I would say two or three times.

Q. And it included stops at the Waldorf Astoria, the Ritz Carlton, and the St. George Hotel, and the New Yorker, and the Los Angeles Ambassador and the Biltmore and the other hotels that have been testified about?

A. That is correct.

Q. All of them are correct?

A. Absolutely.

Q. And the names that have been testified about, they are all correct?

A. I am sure they are.

Q. And it included the purchase of how many
1219 expensive automobiles?

A. Oh I don't know—that money I threw it away, right and left.

Q. Well, right and left. And it included a Packard automobile in Los Angeles for Mr. Shactmeyer?

A. Yes.

Q. For \$3200.00?

A. Yes.

Q. It included the purchase of a Plymouth car in New York? It included the giving of \$4,000 to some one?

A. Yes it did.

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Q. Who did you give it to?

A. Well I gave \$4000 of it in cold money to my mother.

Q. What do you mean by "cold money"?

A. I mean money that was not ransom money.

Q. It had been exchanged for ransom money?

A. Yes.

Q. You mean you changed the ransom money?

A. I did with the help of Jean Breese and her brother.

Q. How did you change that money?

A. We went to the bank, Jean Breese and her brother and I, and exchanged the money for good money.

Q. And did you also use the device of going to
1220 one city and telegraphing a large sum of money to another city, then going to the other city and picking up new money from the Western Union?

A. That was entirely Jean Breese's idea.

Q. Well I say, did you do that?

A. Yes.

Q. Now this money, where was this money given to your mother?

A. In an apartment in St. Louis.

Q. When?

A. November 1935, I think it was.

Q. Now I will ask you if you didn't wash that money very carefully?

A. I think Miss Breese washed it. One of us did.

Q. When you say one of you did, didn't you wash that money?

A. Possibly I did.

Q. Why did you wash the money?

A. Why did I wash the money?

Q. Yes, why did you wash it?

A. I imagine to take off the fingerprints.

Q. Well I am not asking you for your imagination. I am asking you why you washed that money?

A. To take the fingerprints off.

Q. Well you hadn't committed any offense.
1221 This was all just an agreement. You hadn't kidnapped anybody.

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A. At that time I met Miss Breese, at the time I left Indianapolis, I met her New Year's eve of 1935, and it was through her that I was able to do many of the things I did in escaping the law.

Q. Well you had not committed any offense.

A. You claim I had.

Q. But you say you hadn't. You say it was all an agreement, and I want to know why a year later you were washing money?

A. With the entire FBI looking for you, I think it was appropriate to.

Q. So you were attempting to escape detection?

A. Well I think I was.

Q. Well were you?

A. Yes.

Q. And some other of that money went to your family, didn't it?

A. I gave Miss Breese \$2,000 or \$3,000 of it for her family.

Q. And some of it also went to your father, didn't it? And to your lawyer, in Nashville?

A. I don't know.

Q. Now I will ask you if your father didn't get
1222 a part of that money, and if Mr. Monte Ross didn't get a part of that money and Dr. Fenn didn't get a part of that money?

The Court: Let's take one at a time.

A. My father obtained about \$500.00 of that money in New York City. It was not ransom money.

Q. It was ransom money that you had washed, cold money as you call it?

A. Not ransom money that I had washed.

Q. Ransom money that you had changed?

A. Yes.

Q. And Dr. Joe Fenn got part of that money, too, didn't he?

A. I am sure Dr. Fenn did not get any of it.

Q. And Mr. Monte Ross got some of that money, too, didn't he?

A. I don't know that he did.

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Q. Well you delivered money for his use, didn't you?

A. I did not.

Q. Didn't you send Stephen Breese with some money for Mr. Ross?

A. That's different. Yes, I sent Jean's brother down to Nashville with some money for my father and not for Mr. Ross or Dr. Fenn. What my father did with it, I don't know.

1223 The Court: How much was it?

Witness: \$500.00.

Q. Now, with reference to the Shaetmeyer transaction, that was a Packard?

A. That is right.

Q. And you paid \$3200.00 for that, didn't you?

A. I did.

Q. Now as a matter of fact you spent about \$2000.00 a month is your best estimate, isn't it?

A. No I could not have spent that much money.

Q. How much did you spend?

A. I have no way of estimating that. I have no record of it.

Q. The best estimate you can give? About how much a month?

A. I wouldn't know. I would not know what I spent. I know when I was arrested I only had less than \$4000.00 of it left.

Q. You had some hidden out in a fireproof storage house out in California, didn't you?

A. I had a small amount of money.

Q. What do you mean by "a small amount of money"? How much did you have?

A. I don't know.

1224 Q. Oh yes you do. How much did you have?

A. At one time we had about \$7500.00 out there, and I think I had drawn on that and probably had taken it out one or two times.

Q. At the time of your apprehension you had about \$7500 or some approximate figure?

A. No. I think the records show that, that I had about \$4000 at the time I was apprehended.

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Q. On your person. But didn't you have some stored out?

A. No.

Q. Are you positive about that?

A. No. If you are speaking about previously when that money was in the Forest Hills Storage Company—

Q. (Interrupting) I am not talking about the Forest Hills Storage Company. I am talking about the storage company in California?

A. There was only one storage place I kept any money.

Q. Well where in Los Angeles did you leave any money?

A. That was at the storage warehouse which you already know about.

Q. That has not been testified about, has it?

A. No but I am sure you know it because Miss 1225 Breese told the FBI.

Q. How much money did you have at Forest Hills?

A. I don't remember. At least \$10,000 or \$7500 there, but I don't know.

Q. And the \$10,000 or \$7500 you had at Forest Hills for a while, and then what was the name of the company in Los Angeles where you had some \$7500.00 or \$10,000?

A. Where the correspondence file was, you mean? That was in the American Storage Company on Beverly Boulevard.

Q. Now at the time of your apprehension you apparently were rather heavily armed. Is that correct?

A. Well I don't know that you would call it heavily armed. I had an automatic shotgun with No. 7 shells in it for hunting birds.

Q. Human birds or other kind of birds?

A. Well I never shot anybody in my life so I wouldn't think it was human birds. And I had a 45 automatic pistol which was my own.

Q. What did you have it for?

A. For protection, I suppose.

Q. From the FBI?

A. I don't know. I wouldn't say for just what our

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pose I did have that.

1226 Q. What other guns did you have?

A. We had two 25 automatics. Miss Breese had one and I had the other.

Q. What for?

A. Well for the same reason that anyone would have guns around home.

Q. Well tell the jury that reason?

A. Well we had large sums of money on us, and for no other reason.

Q. Well a lot of that money was in safety deposit boxes or in safety storage warehouses, wasn't it?

A. Yes, but I had \$4000 on me when they took me in.

Q. And you were protecting that money from whom?

A. From anyone who would be likely to try to get it.

Q. What other guns did you have?

A. There was a .38 in the house which was not my gun. That gun belonged to Mrs. Spencer that I rented the house from.

Q. So, you had a shotgun for hunting birds. Now that shotgun was immediately inside your front door?

A. The shotgun was either in the bed room or the living room, I don't recall which.

Q. Have you ever been troubled with birds in your bed room or living room?

A. No but I did go out on the desert and shoot
1227 birds.

Q. You went out where?

A. On the desert.

Q. Was the gun loaded?

A. I think the gun was loaded.

Q. Were you preparing to shoot birds when you were apprehended?

A. Well I don't think I would have had No. 7 shot in the shotgun if I was prepared to shoot human beings with it.

Q. I didn't say anything about shooting human beings. Did I put that in your mind?

A. You sure did. You said "human birds."

Q. But we will agree that you were not going to shoot

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birds in your bed room or living room with that loaded shotgun?

A. No I don't think so.

Q. Now the 45 I think you said that was for protection?

A. Yes.

Q. And you didn't have a permit?

A. Yes I did have a permit to shoot a gun. I bought a gun in Indianapolis, Indiana. I gave my right name. It took me 24 hours to get the gun. I had to sign an application for it, and I ordered it at the same time the Chief of Police of Indianapolis was in the sporting
1228 goods place.

Q. When did you buy that gun?

A. In 1934.

Q. What for?

A. Why, I couldn't say.

Q. Oh Mr. Robinson. In 1934 did anything unusual happen in your life after you bought that gun?

A. I never used the gun on anybody.

Q. What did you buy it for?

A. I don't know.

Q. You cannot answer that?

A. I can't say.

The Court: What time in 1934 did you buy it?

A. August, I think.

Q. Were you in sufficient funds at that time, Mr. Robinson?

A. No I would not say that I had sufficient. I had some funds but I wouldn't say how much.

Q. You had enough to buy a 45?

A. As I recall it only cost around \$36.00 at that time?

Q. \$36.00 you say you paid for that gun?

A. I think so.

Q. Now I show you this letter. I ask you to
1229 examine that letter and that envelope and tell the jury whether you typed that letter and whether you mailed it to your father?

A. I am sure that that is the letter that I wrote.

Mr. Brown: I would like to read this letter to the jury.

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"Mr. Thomas H. Robinson
1716 Ashwood Avenue
Nashville, Tennessee.

The Court (Interrupting): What is the date of that letter?

Mr. Brown: It is undated, Your Honor. The envelope bears the date October 13th, 5:30 p. m.

The Court: All right.

Mr. Brown (Reading):

"Dear Sir:

"I am the kidnapper of Alice Stoll. She is alive and well in a place close to Louisville, and only has a small cut on her head, which has healed.

"She is sending her wedding ring, on the side of which is engraved her name and Berry Stoll's, to identify us. Also, she is sending a letter in her own handwriting. You may identify her handwriting, if necessary.

"MAYBE YOU HAVE TURNED THE MONEY OVER TO THE ONE WHO APPROACHED YOU FOR IT.

1230 "HOWEVER, IF YOU ARE NOT SURE THIS IS THE PROPER ONE, AND YOU HAVE NOT ALREADY PAID THE MONEY, DO THE FOLLOWING:

"PAY THIS \$50,000 over to your daughter-in-law, who lives in Sterling Court.

"We will give her instructions secretly. Have her walk around her neighborhood so as the contact with her can be made.

"HAVE HER FOLLOW OUT EXACTLY THE PLANS WHICH ARE MADE KNOWN TO HER.

"SHE WILL HAVE TO MAKE A TRIP, so tell her this:

"This should be all the authority you need.

"Mrs. Stoll will never be seen alive, unless you do this.

"ALSO SEE THAT YOUR DAUGHTER-IN-

Testimony of Thomas H. Robinson, Jr.

LAW IS NOT FOLLOWED OR WATCHED. IF SO, well, you know what we threatened to do.

"This is all the identification that you need. So go ahead and carry out the plan as soon as possible.

"KIDNAPPER

"BE SURE AND TELL YOUR DAUGHTER-IN-LAW TO CARRY OUT HER INSTRUCTIONS JUST AS THEY WERE GIVEN TO HER.

(In red type) "DO NOT GIVE THIS LETTER TO POLICE UNTIL YOU HEAR THAT MRS. STOLL HAS BEEN RELEASED. ANY EFFORT TO SHADOW YOUR DAUGHTER-IN-LAW WILL MEAN DEATH TO MRS. STOLL. YOU ARE A FRIEND OF THE STOLL'S. IF YOU WANT TO SEE HER RETURNED ALIVE, DO NOT MAKE KNOWN THIS LETTER TO ANYONE UNTIL SHE IS RELEASED."

(The document above read was handed to the Reporter, marked Government's Exhibit No. 80, and filed.)

Q. Now, with reference to the purchase of the 45 automatic, you have talked about, I will ask you if this letter was not written after the purchase of that automatic?

1231 A. Yes, it was.

Q. Now, Mr. Robinson, coming back again to your spending of the ransom money, in the Christmas season of 1934 you were in New York, weren't you?

A. Yes, I was in New York City.

Q. And in one of the hotels there, I will ask you if you didn't meet a young woman with whom you had considerable drinks?

A. Not in a New York hotel.

Q. Well during the time you were staying at a New York hotel?

A. I possibly met several.

Q. Well at Greenwich Village particularly, if you didn't meet a young woman with whom you had consider-

Testimony of Thomas H. Robinson, Jr.

able drinks, and if you didn't take her to your hotel room and if she didn't give you some knock-out drops?

A. I received what is known as a Mickey Finn from a nightclub I was in, and I did go to a hotel and passed out, I think.

Q. And a young woman was with you?

A. Yes, she went to the hotel with me, as I recall it.

Q. And you had at that time about \$500.00 on your person didn't you?

A. I don't remember.

1232 Q. Well a considerable sum of money, didn't you?

A. Yes I had some in my billfold.

Q. And in your valise you had considerable money in there?

A. Yes, I had some.

Q. And I will ask you further if after you had this Mickey Finn as you call it administered to you, didn't you wake up some days later, or some hours later, and found that this woman you had gone to the hotel with had taken all of the available money that you had on your person, with the exception of a \$5.00 bill? And didn't you make this statement, "Well that's a good joke on her. She got away with less than \$500.00 and \$48,000 was in my suitcase." Did you make that statement?

A. Who would I say that to?

Q. Well did you say that?

A. I did not.

Q. Well how much money was it? Is it all true except the \$48,000 part?

A. Yes, I admit that but there wasn't \$48,000 in the suitcase, because I didn't have that much.

Q. Well how much money was there?

A. I don't know. I don't know. I had been spending some money and I don't know just how much there
1233 was in the suitcase.

Q. Now this was around Christmas time, in 1934, wasn't it?

A. I don't have the slightest idea how much money was in there or how much I spent at all.

Testimony of Thomas H. Robinson, Jr.

Q. You mean you spent it so freely?

A. No; I just made no effort to keep up with what I had spent.

Q. You still think it is a good joke on that girl when she got a few hundred dollars and you had—

A. (Interrupting) I think it was a good joke on me, instead of the girl.

Q. She got a very small part of the ransom money whether it was \$5,000 or \$50,000 in the suitcase?

A. Well she did pass up the money that was in the grip—I don't know how much was in it.

Q. That is the first girl that ever got the best of you?

A. It seems like they got the best of me all my life if you ask me.

Q. You lay your downfall to women mentally or physically?

A. I wouldn't want to say.

Q. You wouldn't want to go that far?

A. No I wouldn't.

1234 Q. Now, Mr. Robinson, on your return to Louisville after your arrest in Glendale, California, I will ask you if the arraignment date wasn't set for 10 a. m. on the 13th of May 1936 and, further, if that hour wasn't delayed from hour to hour pending the arrival of your mother from Nashville and pending the arrival of your father and a friend of his from Nashville?

A. I think that that's true, yes.

Q. So this inference of 6 p. m. arraignment, that was purely for your convenience and the convenience of your mother and your father, wasn't it?

A. It was not for my convenience.

Q. Well for the convenience of your mother and your father?

A. I wouldn't say whether it was for any of my family's convenience. It was for the convenience of the FBI to get me to plead before I had the advice of counsel.

Q. Now you say Mr. Connelley and Mr. Bugas—what did they threaten you with? Death if you didn't plead? Or what did they threaten you with?

A. Yes they threatened me with the death penalty.

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They showed me a newspaper which said in headlines that said, "Robinson to die." They laid that out before me and insisted that I plead guilty.

Q. When you say they "insisted that you plead
1235 guilty," which one of them said that?

A. Mr. Dewey I think was the main instigator of that.

Q. All right, go ahead. What did he say?

A. Well I don't know exactly what he said.

Q. Well the substance of it?

A. I don't remember the substance of it. I was in such a confused state of mind from lack of sleep and from being pushed around that I couldn't say just what they said.

Q. What do you mean by being pushed around? Riding in an airplane?

A. I was hurried along from one place to another, and questioned all day and all night with no sleep. I can't remember the actual words of the conversation but I remember the effect of it.

Q. The effect was if you did not plead guilty that the FBI would kill you? Or who would kill you?

A. I don't know.

Q. You don't know. Did you have the impression that the FBI had machine guns trained on you at that time?

A. I know they did have them trained on me.

Q. During your stay in the Starks Building?

A. I don't know about that.

Q. Well you say you do know. How did you
1236 know that?

A. Well there were machine guns in the Starks Building.

Q. Well did they have them trained on you?

A. I didn't say that they had them trained on me at that time, no.

Q. Well did they leave the impression that unless you plead guilty that they were going to shoot you?

A. I don't remember just what impression they did leave on me.

Q. If any. You don't remember what impression it

Testimony of Thomas H. Robinson, Jr.

did leave on you, if any?

A. Yes, it left some impression on me—

Q. (Interrupting) A slight impression?

A. I would say it was more than a slight impression if they threaten you with death if you don't plead guilty.

Q. I show you a letter dated July 1, 1936, addressed to Mr. W. A. Smith, Special Agent, and ask you if you wrote that letter?

A. Yes I wrote that letter.

Q. Wasn't that letter written voluntarily by you for the purpose of accomplishing that which you seek to have accomplished in that letter?

1237 A. The purpose of that letter was to release an automobile which the County of Los Angeles held in storage. There was some charges on the car and I was told that I could get the money for this car, which would be sold at a Sheriff's auction if I were to disclose to this Agent Smith how I obtained the Plymouth automobile, with what money I bought it and how I bought it so that the FBI would release the car to me or the money that was received in return from the sale of the car.

Q. And you wanted the money to go to your mother, didn't you?

A. I did.

Mr. Brown (Reading):

“July 1, 1936.

“Mr. W. A. Smith, Special Agent,
Federal Bureau of Investigation
U. S. Department of Justice
Kansas City, Missouri.

“Dear Sir:

“Would you please turn over to my mother, Mrs. Thomas H. Robinson, Jr., all of my personal effects that are free and unattached.

“My automobile which I purchased from Patterson & Schmidt, Woodhaven, N. Y. C. for the sum of \$784.00, purchase price of which consisted of one \$500.00 bill and three \$100.00 bills, which money was received in exchange for ransom money, which said automobile is

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now held under attachment by the County of Los Angeles, State of California.

1238 "If this car, or any money recovered can be legally released, I would like for it to be turned over likewise to my mother.

(Signed) "Thos. H. Robinson, Jr."

Mr. Brown: That has already been filed as Government Exhibit No. 51.

Q. And you wanted the money to go to your mother, didn't you?

A. I did.

The Court: Members of the Jury, we will take a very short recess. Just move around gently and get back in the box in about five minutes. Do not discuss this case among yourselves or with anybody or allow anyone to discuss it in your presence.

After recess the following proceedings were had:

Mr. Brown: That is all the cross-examination of this defendant,

The Court: Do you wish to examine him further, Mr. Hogan?

Mr. Hogan: Just briefly, if Your Honor please.

The Court: All right, let the witness take the stand.

1239 Redirect Examination by Mr. Hogan.

Q. Mr. Robinson, you were asked upon direct examination if your insanity proceedings was not had at the instance of your father as a sham to shield you from the criminal charges of these indictments? Is that true?

A. That is not true. My father at that time had no political influence to that extent and at the time the criminal charges were nolle prossed against me I was in the Central State Hospital.

Q. What do you mean by nolle prossed, so that the jury may know?

A. The criminal charges were dropped and filed away at the instance of the State, and I could have gone free after that time; after the charges were dropped I could have gone free but I wasn't; my father still thought that I

Testimony of Thomas H. Robinson, Jr.

was insane and—

Mr. Brown (Interrupting): I object to what he thought.

The Court: He can tell what his father did, but not what his father thought.

Q. Well before you tell that, when the charges in the criminal court in Nashville were filed away, was there anything to then hold you in the insane institution?

A. No, there wasn't. I could have gone out, my
1240 father could have gotten me out.

Q. Well, did you get out?

A. No, I didn't.

Q. What happened then?

A. He took me to the Davidson County Court and had me recommitted.

Q. Was an inquiry into your sanity had in the Davidson County Court?

A. There was.

Q. Was that after the charges in the criminal court had been filed away?

A. Yes it was, some months afterwards.

Q. And what was the result of this second inquiry into your sanity?

A. I was recommitted to the insane hospital at Bolivar.

Q. Now, Mr. Brown asked you if you didn't make the statement that if he brought these women into court that you would smear them. Did they bring one or more of these women into court that he mentioned against you?

A. They did. They brought the first girl that testified that I took this ring away from her at 2:30 in the afternoon and I was in reality working for Du Pont at that time. She appeared in Magistrate's Court and the
1241 Magistrate threw the case out, after I produced proof that I was working that afternoon.

Q. Was she present in court and did she testify against you?

A. She was there and she testified and I didn't smear her.

Q. Did you attempt or threaten to smear her?

A. I did not.

Q. What happened to this other charge that was placed?

Testimony of Thomas H. Robinson, Jr.

against you by this second woman?

A. The girl later on stated that she was mistaken in my identity—

Mr. Brown (Interrupting): I am going to object to what she said.

The Court: Objection sustained.

Q. Well what happened to the charges?

A. The charge was dropped.

Q. Did you smear her?

A. No I didn't smear her at all.

Q. Well did you attempt to smear her?

A. No I didn't. I was the one who was the loser. I lost my job at Du Pont's as a result of it.

Q. Did you hit Mrs. Stoll on the head with a pipe?

A. I did not.

1242 Q. Or any other object in her home?

A. I did not.

Q. Mrs. Alice Stoll, I mean?

A. I did not. I had no pipe in my hand and I never saw that pipe that was there until I came into this court room.

Mr. Hogan: That is all.

Recross-examination by Mr. Brown.

Q. Wasn't that pipe shown to you on May 11th and 12th, 1936?

A. I do not recall ever having seen that pipe in my life.

Mr. Brown: Now Your Honor, this opens up a new field at the defendant's instance.

The Court: I think that statement that he never saw the pipe, he ought to be cross-examined on that.

Q. Now as a matter of fact didn't—

(At this point the iron or lead pipe which counsel held in his hand hit the table or was dropped on the table.)

Mr. Brown: I beg the pardon of the Court and jury, the act was purely involuntary.

Mr. Hogan: Now if your Honor please, I think that was done deliberately to prejudice the jury.

The Court: I don't think so. Anyone knows that an

Testimony of Thomas H. Robinson, Jr.

1243 iron pipe of that character is likely to make a noise if it hits the table. The jury will disregard that noise. Counsel assures us that it was not intended.

Recross-examination Continued by Mr. Brown.

Q. Wasn't this pipe shown to you by Mr. Bugas and Mr. Dewey in the office of the FBI on May 12th 1936—

A. (Interrupting) It was not.

Q. And if at that time you didn't tell Mr. Bugas and Mr. Dewey that, "That may have been the pipe or it may have been the butt end of my pistol I hit her with."

A. No I did not.

Mr. Hogan: That is a statement before he was arraigned, and anything he said before he was arraigned is not admissible here.

Mr. Brown: You went into it.

The Court: I think you opened it up Mr. Hogan as to this pipe. I think any statement he made with reference to the pipe can be brought out, purely for the purpose of contradicting, if it did contradict, what he now testifies about the pipe, and it will be received for that purpose only.

A. Well I will answer that, I did not.

Q. You did not make that statement to Mr. Bugas.

1244 A. I did not.

Q. You did not make that statement to Mr. Bugas and Mr. Dewey who is now a Lieutenant Commander?

A. I did not.

The Court: Members of the jury, we will take the noon recess at this time. As I have told you before in all these recesses, do not discuss it among yourselves, or with anyone, and do not allow anybody to discuss it in your presence.

We will adjourn until 2 o'clock p. m.

Convened pursuant to adjournment and continued with the proceedings as follows:

1245 ALVIN W. KIRTLEY called as a witness in behalf of the defendant, being duly sworn, was examined by Mr. Hogan and testified as follows:

Testimony of Alvin W. Kirtley

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Alvin W. Kirtley.

Q. Where do you live, Mr. Kirtley?

A. 1708 S. Fourth.

Q. What is your business or by whom are you employed?

A. I am not employed now. I have been off since April with an injured back. My last employment was at the Bernheim Distillery.

Q. During the month of October, 1934, by whom were you employed?

A. Taxicab company—Kentucky Taxicab.

Q. On the afternoon of October 16th, 1934, were you driving a taxicab over the streets of Louisville?

A. Yes, sir.

Q. Did you see this defendant, Thomas Henry Robinson, Jr., on that afternoon?

A. Yes, sir.

Q. Will you turn around to that jury and tell this jury just what you saw and observed on that occasion?

A. I was coming West on Main Street—

The Court: Let's get the time first.

1246 A. It was approximately—it was in the late afternoon. I couldn't say exactly what time. I was at Shelby and Main and this car cut in front of me and hooked my fender.

Q. When you say "this car," what car do you refer to?

A. The car that this man was driving.

Q. All right.

A. And he went on down Main Street and I followed him and caught him at Preston, and I pulled alongside of him and hollered at him, naturally mad, the words I said wasn't very pleasant, and he kept going and I followed him to Floyd Street, and he was on down in traffic ahead of me and I got behind some trucks, so I just looked out, my fender wasn't hurt, so I pulled over, cut across to Floyd Street.

Testimony of Alvin W. Kirtley

Q. Was anybody with him on this occasion?

A. There was a woman.

Q. Where was she seated in the car?

A. In the front seat.

Q. By the side of this defendant?

A. Yes, sir.

Q. Was her mouth taped?

A. No, sir.

Q. Was she—were her hands bound?

A. Not that I could see.

1247 Q. What was she doing?

A. Just sitting in the car.

Q. Did she appear to be in distress?

A. No.

Q. Did she make any effort to attract your attention?

A. No, sir.

Q. Do you associate the woman you saw with any picture of any woman that you have seen since that time?

A. Yes, sir.

Q. Tell the jury about that.

A. When I saw the picture in the paper, and when I saw the picture I recognized it as the woman—I mean, it looked like the woman that was in the car.

Mr. Brown: Unless you know, I am certainly going to object.

The Court: What picture are you referring to?

The Witness: A picture that I saw in the paper.

Mr. Brown: Have you got the paper there, Mr. Hogan?

Q. I don't have that paper. Let's ask him first what paper he refers to.

A. It was the paper—1936, I think it was, when they had the trial, I saw the picture, and I said something to my wife, I said—

1248 Mr. Brown: I object to what he said to his wife.

The Court: Never mind what you said to your wife. You saw a picture in the paper?

The Witness: Yes, sir.

The Court: You don't know whose picture it was?

The Witness: It was the picture of the woman that was in the car.

Testimony of Alvin W. Kirtley

The Court: Other than that, you don't know who it was?

The Witness: I know the name that was under the picture it said it was, Mrs. Stoll.

Q. What kind of license did this car have with reference to whether it was a Kentucky license or a license from another state?

A. It had an Indiana license.

Mr. Hogan: You may ask him.

Cross-examination by Mr. Brown.

Q. Now this was on October 16th, 1934?

A. October 10th, I believe it was.

The Court: You said the 16th on your direct testimony.

The Witness: Sir?

The Court: You said the 16th on your direct testimony.

The Witness: I think it was the 10th, I believe.

1249 Q. Now which was it?

A. It was the 10th.

Q. How do you fix that in your mind?

A. Well, it was just this way, I remember that it was the day that the paper said that she was kidnapped.

Q. Who?

A. Mrs. Stoll.

Q. Did you hear that afterwards?

A. What did you say?

Q. Did you hear that afterwards?

A. I read it in the paper.

Q. And you, of course, immediately reported it to the police.

A. No, I didn't.

Q. You didn't report it to the police?

A. No.

Q. Didn't you read about the kidnapping?

A. I didn't see this picture until it was 1936 when he was tried. I never saw any picture of Mrs. Stoll until then.

Q. At that time did you report it to the police?

A. No.

Testimony of Alvin W. Kirtley

Q. Did you report it to the FBI?

A. No.

1250

Q. Did you report it to anyone?

A. No.

Q. Now, when was it recalled to your recollection?

A. When I saw the picture.

Q. In 1936?

A. Yes.

Q. Did you report it to anybody at that time?

A. No. The best I got, he was already convicted and gone.

Q. And there wasn't any use.

A. Well, I didn't know. The fact is, I didn't want to be bothered.

Q. You didn't want to be what?

A. I just didn't want to be as a witness.

Q. Witness for what?

A. I didn't want to state myself. I would have to be called as a witness if I did have to.

Q. Did you report it to anybody?

A. No.

Q. Did you talk to anybody about it?

A. Not except at home.

Q. Haven't you talked to Mr. Hogan about it?

A. Oh, yes, this last time.

Q. How did you get in touch with Mr. Hogan?

A. I went down to see him.

Q. You went to see him?

A. Yes, sir.

1251

Q. At that time you didn't report it to any authorities?

A. Well, I just told Mr. Hogan what I saw, and I thought—

The Court: When? When did you tell him?

The Witness: That was about—I guess it has been three months ago, something like that, two months.

Q. And that's the first time that you mentioned it.

A. Yes, sir.

Q. And you recall it from seeing a picture in the paper.

Testimony of Alvin W. Kirtley

You saw all those pictures during the kidnapping period, did you not?

A. No.

Q. Now, did you read about the kidnapping?

A. Well, just the headlines. I didn't read it very thoroughly.

Q. It didn't mean anything to you.

A. Well, just as news.

Q. Did you recognize Robinson's picture at that time?

A. Yes.

Q. And at that time wasn't Mrs. Stoll's picture published in the paper?

A. I don't think I saw it.

Q. You don't think you saw it?

1252 A. No.

Q. You saw Robinson's picture, did you not?

A. Yes.

Q. At that time you recognized that was the man you saw either on the 16th or the 10th, did you not?

A. That's right.

Q. And at that time, when the entire country was looking for Robinson, you did not report it to a soul?

A. No.

Q. You did not.

A. No, sir.

Q. Why didn't you?

A. Well, just like I said, I didn't think it amounted to anything.

Q. Well, you were interested in apprehending law violators, were you not?

A. Yes, sir.

Q. And when you see a man that everybody in the country is looking for, you don't report it?

A. Well, I only saw him—he was gone then, I didn't think it would help anything.

Q. You didn't think it would help. You didn't think it would assist any law enforcement officer?

A. No.

Q. What did you go to Mr. Hogan's office for?

1253 A. Well, after I got to thinking about it and I

Testimony of Alvin W. Kirtley

kept saying something about it, I just wanted to get it off my chest and tell somebody.

Q. Finally wanted to make a confession of it.

A. Yes, sir.

Q. It had been hurting your conscience for seven or eight years.

A. Yes, I had thought about it.

Q. And you say you have been unemployed since April of this year?

A. Yes, sir.

Q. Had you known Mr. Hogan before?

A. No, sir.

Q. Never heard of him before.

A. No, sir.

Q. You went up to his office and found it out—went up to his office and found him.

A. Yes, sir.

Q. Introduced yourself to him.

A. Yes, sir.

Q. And told him, "My recollection is refreshed over a period of nine years and I can recall that I saw Tom Robinson"—did you tell him that?

A. No, sir. I told him that I was sure that I saw—the fellow had hit me was Robinson, and he asked
1254 me to tell him all about it, and then I just told him the whole story.

Q. You just told him. Was that the first time you found out it was the person you now identify as Mrs. Stoll?

A. Sir?

Q. Was that the first time you told him who the person was that you now identify as Mrs. Stoll?

A. Yes. No. He didn't ask me to identify Mrs. Stoll.

Q. I am asking you, for the first time, was that when you told Mr. Hogan the person that you identified was Mrs. Stoll?

A. Yes.

Q. What is your name?

A. Alvin W. Kirtley.

Q. Is your name Harold Colvin?

A. I have worked under that name, yes, sir.

Testimony of Alvin W. Kirtley

Q. When you say you have worked under that name, what do you mean by that?

A. Not Harold; Harry.

Q. Harry Colvin. Where do you live?

A. 1708 Fourth.

Q. Are you married?

A. Yes, sir.

Q. You say you were working for what cab company?

1255 A. Kentucky Cab.

Q. Kentucky Cab. How long did you work for them, Mr. Kirtley or Mr. Colvin, which is it?

A. Kirtley. I worked for them off and on for about three years.

Q. When did you begin to work for them?

A. Well, that I can't recall right now.

Q. If you can recall something that happened nine years ago, October 10th, you certainly can recall when you started to work for them, Mr. Kirtley.

A. Well, I worked there—I can't remember.

Q. Give me your best judgment, Mr. Colvin.

A. I think I worked there in 1933, I believe.

Q. How long in 1933?

A. I really don't know.

Q. Your best judgment?

A. Well, let's see—I came from the Ready over there.

Q. Came from where?

A. The Ready Cab Company.

Q. The Ready Cab?

A. Yes.

Q. When did you start working for the Ready Cab?

A. That was in 1932 or three, I am not sure.

Q. 1932 or three, you are not sure?

A. I only worked there a few days.

1256 Q. A few days. Then you went where?

A. To the Kentucky.

Q. Is that the company of which Mr. Burks used to be the head?

A. Yes, sir.

Q. When did you start to work for them?

Testimony of Alvin W. Kirtley

A. I couldn't tell you just exactly when it was. I had worked for them—well, the way I worked for them was off and on, and I couldn't tell you the exact date I went there.

Q. All right, approximately?

A. I would say the first time I went there was in the spring of 1934, I believe it was.

Q. Spring of 1934?

A. I think so.

Q. How long did you work for them at that time?

A. I worked off and on there for two years.

Q. Off and on—what do you mean by off and on?

A. Well, I worked a while and then maybe I would do something else and I would go back and work again when I would get out of a job.

Q. You mean you have no recollection of what you would do?

A. What I would do?

Q. Yes, whether you worked three months and
1257 quit for three months, and worked for three months more and quit for three months?

A. Yes. I didn't work that way. I just worked—I believe the longest that I was there at one time was about six or seven months.

Q. All right, when were you there six or seven months?

A. It was in 1934, I believe it was.

Q. And you think you were there from the spring of 1934 to the fall of 1934?

A. I went to the Yellow from there.

Q. When did you go to the Yellow?

A. It was in the fall of the year, I believe it was in October of 1935.

Q. You went to the Yellow in October of 1935, you now think?

A. I think that is what it was, I am not sure.

Q. What is your best judgment, Mr. Kirtley?

A. That's it.

Q. October, 1935, you think you quit the Kentucky Cab in the fall of 1934?

Testimony of Alvin W. Kirtley

A. Yes, in the latter part of 1934.

Q. What did you do for that year you were not working for the Kentucky or the Yellow?

A. Of the fall of 1934?

1258 Q. The year that you were not working. You said you quit the Kentucky Cab in the fall of 1934 and went to the Yellow in October of 1934. What were you doing that year?

A. I went from the Kentucky to the Yellow.

Q. So if you worked for the Kentucky Cab until the fall of 1934, you went right to the Yellow, didn't you?

A. Yes, I did.

Q. So you worked for the Yellow from October, 1934, did you not?

A. No. It was in 1935, I believe.

Q. Now, let's get it straight, Mr. Kirtley. How long did you work for the Kentucky Cab?

A. I worked there approximately two years.

Q. Approximately two years?

A. Yes.

Q. And when was the last time you worked for the Kentucky Cab?

A. It was in the fall—I left there in the latter part of the fall. I don't know whether it was November or what it was I went to the Yellow.

Q. What year?

A. Of 1934, I believe.

Q. The fall of 1934, you went to the Yellow.

The Court: If the witness will take his hand
1259 down, keep from covering his mouth, I think the jury will be able to hear him better.

Q. You say your name is Alvin W. Kirtley?

A. Yes, sir.

Q. I'll show you Division of Motor Vehicle Transportation, dated May 1st, 1943. What name were you using at that time, Mr. Kirtley?

A. Harry William Colvin.

Q. Harry William Colvin at that time. Now let's look at this application for renewal license. Examine that and tell the jury what name you were using at that time

Testimony of Alvin W. Kirtley

and the date.

A. Harry William Colvin.

Q. Harry William Colvin. Let's look at this other renewal and find out what name you were working under at that time.

A. Harry William Colvin.

Q. And let's look at this renewal?

A. Harry William Colvin.

Q. And this renewal?

A. Harry William Colvin.

Q. Now let's look for the same period, which is also a driver's license, and ask you to tell the jury for the same period what name you were using.

A. Alvin Whitfield Kirtley.

1260 Q. Alvin Kirtley. Now look at this one.

A. Alvin Whitfield Kirtley.

Q. Look at this one and tell the jury what name you were using at that time?

A. Harry William Colvin.

Q. And this one?

A. Harry William Colvin.

Q. So for those periods, let's see what the periods ran from Mr. Kirtley, Mr. Colvin—that one seems to be April 22nd, 1941, doesn't it?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now that time you are Harry William Colvin, are you not? Now let's look at this one, which is December 16th, 1940, four months before the other one, and tell the jury when you were getting a driver's license, you already had a license, what license you are applying for in that name?

A. You mean by name?

Q. Yes.

A. Kirtley.

Q. Kirtley. What were you exchanging those names back and forth for?

A. I kept two drivers' license all the time.

Q. What for?

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1261 A. I used one driving a cab and used one when I was driving my own car.

Q. One while you were driving a cab, you used one name.

A. I was working by that name for that company, had to have a driver's license.

Q. So at the same time you had in your possession drivers' licenses in the name of Harry William Colvin and the other in the name of Kirtley.

A. Yes, sir.

Q. Why was that?

A. Because I was working for the cab company in the name of Colvin and my name was Kirtley.

Q. Why were you working under the name of Colvin?

A. When I went to get a job I had to be experienced and I tried and tried and I couldn't get on, so I knew a boy by the name of that that had quit, so I applied, told them where he worked, and they gave me the card, except his name wasn't Harry, his name was Harold.

Q. What taxicab were you working for then?

A. When I first did that?

Q. That time.

A. That's when I first started driving a taxicab. That was for the Ready Cab Company.

Q. What cab company were you working for
1262 when you got that driver's license?

A. I guess it was, the first one that ever I got was the Ready Cab Company.

Q. Look at that one right there and tell the jury what cab company you were working for.

A. 1319 S. Second. I was with the Bee Line Company, I guess.

Q. Weren't you with the Sure Pure Milk Company?

A. Oh, yes. This is a Kirtley driver's license.

Q. So you weren't working for a taxicab company at all, were you?

A. Not when I got this one.

Q. So when you said you were working for a taxicab company, and wanted to be known one name in a taxicab company and another name somewhere else, you weren't

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working for a taxicab company at all, were you?

A. The only time I used the name Colvin was when I drove a taxicab.

Q. You were not driving a taxicab there.

A. No. This was Kirtley.

Q. All right, let's look at this one then. Now tell the jury what cab company you were working for there, Mr. Kirtley? I think the date appears April, 1941.

A. April, 1941?

Q. Yes.

1263 A. Well, if I was driving a taxicab—

Q. Not if—what were you doing?

A. In April of 1941?

Q. Yes.

A. Well, that was—the only time I had a license would be with the Bee Line.

Q. As a matter of fact, weren't you a male orderly at the Kentucky Baptist Hospital during that period?

A. Mail order.

Q. Male orderly..

A. I was orderly at the Kentucky Baptist Hospital, but not when I applied for this license.

Q. You were not driving a taxicab at that time, were you?

A. Not until after I was rejected from the Army.

Q. You were not driving a taxicab at the date of that application.

A. Let's see—April. No, sir, I don't think so.

Q. Now Mr. Kirtley, on October 9th, 1934, where were you?

A. I suppose I was working.

Q. You suppose you were. Don't you know?

A. Yes, I know. I was bound to be working.

Q. What?

A. Yes, I was working.

1264 Q. Tell the jury what happened on October 9th, 1934.

A. Well, I don't know of anything that happened except just working, regular day.

Q. You have no recollection of anything that hap-

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pened.

A. Nothing unusual, no.

Q. What happened on October 11th, 1934?

A. Nothing that I know of.

Q. What?

A. Nothing that I know of.

Q. How many calls did you make that day?

A. Why, I couldn't tell that.

Q. Couldn't recall that?

A. Not how many calls I made, because sometimes we made pick-ups and calls too, and we never wrote our pick-ups down.

Q. Have you ever been convicted of a felony?

A. Yes, sir.

Q. How many times?

A. One.

Q. I will ask you if you haven't been convicted twice—

A. No, sir.

Q. I'll ask you if in the year 1934 you were not convicted for the theft—

1265 Mr. Hogan: Not what he was convicted of, Your Honor please.

Mr. Brown: He said he was only convicted once.

The Court: Let's agree on the one first. When were you convicted, Kirtley?

The Witness: I was convicted for grand larceny.

The Court: When?

The Witness: It was—well, I don't know what year it was. I was called twice and was given a year probated sentence.

The Court: You were called twice?

The Witness: Yes.

Q. Who called you twice?

A. I was called in court and was released on bond and I was called back again.

Q. And what was that?

A. Grand larceny.

Q. What articles?

A. Sir?

Q. What articles?

Testimony of Alvin W. Kirtley

Mr. Hogan: Now that's objected to.

The Court: Objection sustained. The cause of it is not pertinent here. We are trying to find the time of the conviction, if one occurred. If Mr. Brown has two different dates, let's see which date the witness agrees on 1266 and we can go on the other one.

Q. I will have to find out a little more definitely this date. What date do you think you were convicted of a felony?

A. The September term of court.

The Court: What year?

The Witness: 1934, I believe.

The Court: Here in Jefferson County?

The Witness: No, sir, Taylor County.

The Court: Taylor County, Kentucky?

The Witness: Yes, sir.

Q. Now that was September of 1934?

A. I think that's right.

Q. What term?

A. September term of court.

Q. Whereabouts?

A. Taylor County, Campbellsville.

Q. Now I will ask if during that same term of court, there were not two indictments.

A. Yes, there were, all on the same charge—is that right?

Q. You ought to know a good deal better than I do.

A. I mean, it was all combined.

Q. There were two separate charges and they were disposed of at the same time, weren't they?

1267 A. That's right.

Q. So there were two indictments.

A. They were all under one, I believe. I think it was all under one, is the way I understood it, all in one.

Q. But you were called up at the same time on two separate charges, were you not?

A. That's right; yes, sir.

Q. Did you enter a plea of guilty?

A. Yes, sir.

Q. And the sentences ran concurrently, did they not?

Testimony of Alvin W. Kirtley

A. I think so; yes, sir.

Q. And to the best of your recollection that was in September of 1934.

A. I think it was.

Q. Take your hand away so we can hear you.

A. Yes, it was 1934, I believe, or three.

Q. 1934 or three?

A. I am not sure about that. It was called twice in September.

Q. If it was in September, 1934, how long did you remain in jail?

A. I was—well I was in jail until I was brought before the court.

Q. And you were in jail after that, too, weren't you, Mr. Kirtley?

A. No, sir.

1268 Q. What?

A. No. I took the sentence and had to report to the court every term for a year.

Q. Weren't you in jail for a number of days?

A. I was in there; yes, sir.

Q. Two weeks?

A. A little longer than that, I believe.

Q. A little longer than two weeks?

A. Yes, sir.

Q. Three weeks?

A. Well, about a month, I believe.

Q. About a month in jail. Now, as a matter of fact, on October 10th, 1934, weren't you in jail in Washington County?

A. No, sir.

Q. You are sure about that?

A. I am positive about that.

Q. In Taylor County?

A. Yes, sir.

Q. You think you were released just prior to October 10th, 1934?

A. I was released in September.

Q. You were in jail for a month, and to your best recollection you were released in September.

Testimony of Alvin W. Kirtley

A. Yes, sir.

Q. Are you married, Mr. Kirtley?

1269 A. Yes, sir.

Q. Where were you born?

A. Taylor County?

Q. When?

A. 1911.

Q. Did you file a questionnaire with Local Draft Board 76?

A. Yes, sir.

Q. Did you report on that questionnaire whether you were married or single?

Mr. Hogan: That's objected to, if Your Honor please?

The Court: I think the credibility of the witness can be attacked. It only goes to his credibility.

Q. Did you report on that questionnaire whether you were married or single?

A. I was single at that time.

Q. You were single?

A. Yes, sir.

Q. When did you marry?

A. 1941.

Q. Where did you marry?

A. I got the license at Harding County.

Q. Hardin County, is that what you mean?

A. Yes, sir.

Q. Elizabethtown?

1270 A. Yes, sir.

Q. Who married you?

A. My father.

Q. Dr. Kirtley?

A. Yes, sir.

Q. To whom were you married?

A. Helen Hogland.

Q. Helen who?

A. Hogland.

Q. How do you spell her last name?

A. H-o-g-l-a-n-d.

Q. H-o-g-l-a-n-d. Where does Helen Hogland live?

A. Her home?

Testimony of Alvin W. Kirtley

Q. Where does she live now?

A. She lives with me.

Q. Is that 1708 S. Fourth Street?

A. Yes, sir.

Q. Who is Beatrice Curry?

A. She is dead.

Q. Who was she?

A. Well, she was a girl that I knew.

Q. Who was Beatrice Kirtley?

A. The same girl.

Q. Were you married to her?

A. No, sir.

Q. When did she die?

1271 A. She got killed in an accident, in 1941, I believe it was.

Q. When, in 1941?

A. I don't remember. It must have been in around April or May, I believe it was, in the spring of the year. She got killed just this side of Frankfort.

Q. The year 1941?

A. I think that was it.

Q. What date were you married?

A. I wasn't married to her.

Q. What date were you married to Helen Hogland?

A. In 1941.

Q. When?

A. October.

Q. October what?

A. October 24th.

Q. Now, when did you file your questionnaire with your Draft Board?

A. My order number was 25. Let's see, I got it, I believe in November.

Q. What year?

A. The first year of the draft. I took the first examine that was given.

Q. As a matter of fact, didn't you get your questionnaire—you registered in October of 1940, did you not?

1272 A. Yes, sir, at the Kentucky Baptist Hospital.

Testimony of Alvin W. Kirtley

Q. And didn't you fill out your questionnaire subsequent to June of 1941?

A. You mean—

Q. With the Draft Board. When did you file your questionnaire?

A. I filed it as soon as I got it and sent it right back in.

Q. When was that?

A. I don't remember the exact date. I was examined. I know it was a few months after that. I was examined in November, of 1940, I believe it was, 1941, the first examine they gave. No, it was January when I was examined for the Army.

Q. What year?

A. Of 1940—let's see, I registered in 1939, I believe it was January of 1940.

Q. You registered in 1939?

A. I registered at the Baptist Hospital in 1940, I guess it was. The first register, I don't—

Q. When you say you registered at the Baptist Hospital, what do you mean by that?

A. When I first signed a card.

Q. When was that?

A. 1940, I believe.

1273 Q. Wasn't it October, 1940?

A. I believe it was, yes.

Q. All right, now when did you file your questionnaire after that?

A. Well, I was examined in January. I guess I filed it along around in November. I was examined in January.

Q. What year, that's what I am trying to get at.

A. 1941.

Q. You think you were examined in January of 1941. At that time, in your questionnaire, did you state under oath that you had never been convicted of a felony?

A. I don't remember that they asked me that.

Q. You don't recall on your questionnaire whether they asked you that or not?

A. No, sir.

Q. You don't recall that.

A. I didn't fill the questionnaire out. I had another

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fellow fill it out for me. He just asked me the questions and he filled it out and I signed it.

Q. He asked you the questions and you gave him the answers?

A. Yes, sir.

Q. And then you signed it.

A. Yes, sir.

Q. And swore to it, of course.

1274 A. Yes, sure. No, I didn't swear to it. I just mailed it in to them.

Q. Did you or did you not swear to it?

A. No, sir. He was just a friend of mine. He was just helping me fill it out.

Q. I will ask you if on your Selective Service Questionnaire, Question No. 6, you were not asked the question and answered it in this way, "I have not been convicted of treason or of a felony," and was sworn to before Ann Riddlehoover, Clerk, Board 76.

A. That's where I was sworn to, but I don't remember answering the question that way. I don't remember a question in the questionnaire like that.

Q. Where have you lived here in the city?

A. You mean addresses of places I lived?

Q. Yes.

A. I lived at 111 West Hill.

Q. 111 West Hill. When was that?

A. That was, I guess, 1937 or eight.

Q. Which was it, '37 or '38?

A. 1937 and eight.

Q. You lived there two years?

A. No. I moved there along, I think it was in about August of 1937, and lived there until the spring of 1938.

Q. All right, let's go back a little further.

1275 Where did you live in the year 1933?

A. 1933, I believe I was living on Breckinridge, at 117 or 113—117 East or 113 West.

Q. 117 East or 113 West?

A. Yes. I lived at both places, and then I lived at 112.

Q. Wait—that's during the year 1933?

A. I think that's right.

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Q. Where did you live during the year 1933, 117 E. Breckinridge or 113 W. Breckinridge?

A. Maybe both. I was living with a lady had two houses and I moved from one down to the other one.

Q. What was that lady's name?

A. Hall.

Q. What Hall?

A. Her name is Mrs. Jean Hall.

Q. Now, the year 1934, where did you live?

A. 1934, I believe I was still living with her. I believe I was still living with her in 1934.

Q. How long did you live down there?

A. She had two or three houses and I lived with her.

Q. Did you live first at one house and then the other?

A. Yes, sir. I just had a room there. Sometimes
1276 she would get another house and she would give me a room in another house.

Q. What kind of a house was that?

A. Just a rooming house.

Q. Rooming house?

A. Apartments and sleeping rooms.

Q. During October, 1934, where were you living?

A. October, 1934, I was still living with her on Breckinridge Street.

Q. Where, on Breckinridge?

A. 113 or 117.

Q. You don't remember which one?

A. I believe I was at 117 East.

Q. 117 E. Breckinridge. When did you first use the name Colvin?

A. When I first went to the Ready Cab Company.

Q. When was that, you say?

A. I believe it was in 1933.

Q. That was the first time you adopted the name of Harry W. Colvin?

A. That's right.

Q. When did you first use Harold Colvin?

A. Oh, that was the time that I was arrested on that felony.

Q. You mean you did not give the authorities your

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1277 right name?

A. No.

Q. You say you did not give the authorities your right name?

A. No, not at that time. I did later.

Mr. Brown: All right, Mr. Kirtley.

Redirect Examination by Mr. Hogan.

Q. Mr. Kirtley, had you ever seen me before October 1, 1943?

A. No, sir.

Q. Had I sent for you?

A. No, sir.

Q. How did you happen to come to me?

A. Well, it just kept bearing on me, and I thought well, I would come down and see you. I saw your name in the paper and I didn't know where your office was. I asked around and found the information where your office was, and I came up to your office.

Q. You mean you saw in the paper after Thomas Robinson, Jr. was brought back here from California to be tried in this court?

A. Yes, sir.

Q. Was that what caused you to come to my office?

1278 A. Yes.

Q. Had you seen that I had been appointed by the court to represent the defendant?

A. Yes, sir.

Q. Did you give me a statement at that time, or did I require you to give me a statement at that time?

A. I gave you the statement.

Q. Was that statement that you gave me on that occasion substantially what you—

Mr. Brown: I am going to object to that. What he has testified here is the important thing. I don't care what statement he made.

The Court: I think he can testify now as to what he saw. What other statement he made at another time I don't think is competent. It is a self-serving declaration.

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Mr. Hogan: Did I understand Your Honor to say he may say what he said to me?

The Court: He can tell now what the facts are, as to what he saw, but as to what he said to you at some other time I don't think is competent.

Q. Mr. Kirtley, the point I want to make is, whether I took the precaution to find out whether you were telling the truth on that occasion.

Mr. Brown: I object to that. That's purely self-serving.

The Court: Objection overruled.

1279 A. Yes, sir. You asked me two or three times about if that was absolutely right, I believe is the way you put it, if I was certain, or something to that extent, and I said that I was.

Q. Did I not require you to give me an affidavit to that effect?

A. Yes, sir.

Q. I'll show you an affidavit dated October 1, 1943, signed by you, and ask you if that's the affidavit that you gave me on that occasion, the first occasion that I ever saw you, as you said, in your life, and I am sure in mine.

A. Yes, sir.

Q. I will ask you to read that to the jury.

Mr. Brown: Now wait a minute—I certainly object to that.

The Court: Some issue has been raised here as to whether this witness is telling a correct story or not, and I think in justice to Mr. Hogan's position that the affidavit probably can be read.

Mr. Brown: Hasn't he testified to the same thing he has in the affidavit? Have you testified to anything differently, Mr. Kirtley?

The Witness: Not that I know of.

The Court: Let Mr. Brown see the affidavit.
1280 If he wants to agree it is substantially the same as to what you have testified here, there is no need to read it.

(Affidavit handed Mr. Brown for examination.)

Mr. Brown: I think that's substantially the same, what

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he has testified about.

The Court: It purely goes to the issue, Mr. Hogan, of whether or not he has changed his story since he saw you. If he has testified to those facts once, there is no reason for the affidavit to be read again.

Mr. Hogan: I just wanted my position made clear in this thing, Your Honor please.

The Court: For that reason it may be considered.

Mr. Hogan: That's all.

Recross-examination by Mr. Brown.

Q. Have you seen my name in the paper since 1935?

A. Yes, sir.

Q. You have never felt any urge to come to the law enforcement office of the Government of this district and make this disclosure?

A. Well, I suppose I would have as much as anybody else, if it just hadn't struck me the other way.

Q. Since 1935, haven't you seen that I have been connected with the District Attorney's office?

1281 A. Well, I didn't know how long you had been connected. I knew you were now.

Q. Long before you ever saw Mr. Hogan's name, my name appeared in the paper as United States Attorney, did it not?

A. Yes, sir.

Q. You never felt the urge to come and make these startling disclosures to me.

A. I didn't know who to go to.

Q. So you waited until you could find out who the defendant's counsel was and then you went to him.

A. Not necessarily. I just merely was thinking about it, and I thought I would go and see somebody, and I saw his name in the paper and I just went to him.

Mr. Brown: All right.

The Court: Mr. Kirtley, let me get more definitely when in your opinion you began your jail sentence that you refer to in Taylor County.

The Witness: It was along in August, I believe, up until the term of court.

Testimony of Alvin W. Kirtley

The Court: August, 1934?

The Witness: Yes, sir, I think that's right.

The Court: Until the September term of court?

The Witness: Yes.

The Court: You mean you got out of jail to go
1282 to court?

The Witness: September, it was along about—I believe it was around about the 7th or 8th of September.

The Court: I thought you weren't convicted of a felony until the September term of court.

The Witness: That's when I went to court and was convicted and was released on probation.

The Court: You were released, then, in September, that's your best recollection.

The Witness: Yes, sir.

Mr. Hogan: That's all.

Mr. Brown: That's all.

JOSEPH M. LONG, SR., called as a witness in behalf of the defendant, was first duly sworn, examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name, Sir?

A. Joseph M. Long.

Q. Senior or Junior?

A. Senior.

Q. Where do you live, Mr. Long?

A. 1022 Marshall Street, Louisville.

Q. Where do you work?

1283 A. Quartermaster Depot, Jeffersonville.

Q. That for the United States Government?

A. The War Department, yes, sir.

Q. In October, 1934, what was your business?

A. I was a Jefferson County police.

Q. Did you have any special assignment during that month?

A. What month was it, sir?

Testimony of Joseph M. Long, Sr.

Q. October, 1934.

A. Yes, sir.

Q. What was that special assignment?

A. At the Stoll home on Lime Kiln Lane.

Q. The Berry V. Stoll home?

A. Yes, sir.

Q. What were you detailed to do at the Stoll home?

A. My partner and I were stationed at the main entrance, at the gate.

Q. Who was or is your partner?

A. Dabney S. Taylor.

Q. Where is he now?

A. I think he is in Africa.

Q. When did you go there?

A. Well, right after the trouble occurred up there. I think it was the following day, if I am not mistaken.

Q. You mean you believe it was—

1284 A. No, I don't think it was the following day.

We searched the neighborhood there for a day or two, the best I can remember. Then a couple days later I was stationed at the entrance of Berry Stoll's home.

Q. You were stationed at the entrance about October 12th, 1934?

A. I couldn't say, sir, as to the correct date, but just a couple days had passed.

Q. Did you stay there until after Mrs. Alice Stoll returned home?

A. I stayed there for sometime after that; yes, sir.

Q. Did you see her after she returned from Indianapolis?

A. Yes, sir.

Q. Did you have a conversation with her?

A. Not by herself. Her husband was with her.

Q. Well, either with her husband or otherwise, did you have?

A. Yes, sir.

Q. What was the conversation?

Mr. Brown: I would like to know when it was.

Q. When was this conversation?

A. I couldn't tell you the date exactly.

Testimony of Joseph M. Long, Sr.

Q. Well, with reference—assuming that she was returned home on October 16th, 1934.

1285 A. Well, it was just a couple days after she had returned home, the best I can remember.

Q. What did she say to you and what did you say to her?

A. Well, I was talking to Mr. Stoll, but I did ask Mrs. Stoll how she felt and she said she felt all right.

Q. What was your conversation with Mr. Stoll?

A. Well, Mr. Stoll and Mrs. Stoll walked around the grounds quite often, and the Federal Agent was usually with her or either Mr. Stoll, sometimes all three of them, and I asked Mr. Stoll some few days later, I don't know just what day it was, how Mrs. Stoll was, and he said she was getting along very nice. He said, "From the experience she had and the excitement, she is doing very well." He says that sometime, I think it was about three weeks previous to the trouble, Mrs. Stoll was feeling awfully bad, said she had a headache she couldn't get rid of, and she was awfully nervous, and he said, "From the excitement it seems like it has cured the nervousness some."

Q. Did you observe Mrs. Stoll's physical condition, yourself?

A. You mean, just to look at her?

Q. Yes.

A. Yes, sir.

Q. What was her apparent physical condition
1286 as you saw her after her return from Indianapolis?

A. Well, she looked to me like she had always looked before that.

Q. Had you seen her before this?

A. Yes, sir, I have seen her before that.

Q. Did she have any bruises that you could see upon her?

A. None that I could see on her at all; no, sir.

Q. Was she complaining in any manner?

A. Not to me, she didn't; no, sir.

Q. Was she complaining to her husband in your presence about anything?

Testimony of Joseph M. Long, Sr.

A. None whatsoever; no, sir.

Mr. Hogan: You may ask her.

Cross-examination by Mr. Brown.

Q. Are you a doctor, Mr. Long?

A. No, sir.

Q. Have you ever gone down to the office some morning just feeling terrible and a casual person meet you and they say, "How are you?" and you say, "I am fine, thank you."

A. Yes, sir; that has happened, that's right.

Mr. Brown: That's all.

1287 Redirect Examination by Mr. Hogan.

Q. Well, did she appear to be in any physical distress when you saw her?

Mr. Brown: I'll object to that. I think he has gone all over that.

The Court: I think you have gone over it once, haven't you?

Mr. Hogan: Not about the physical distress, because he asked him if he had gone to the office—

The Court: Any questions you have overlooked, you can put them in. Just don't repeat the questions.

Q. Did she appear to you to be concealing her real feeling?

A. Well, when I saw Mrs. Stoll, the little I spoke to her, she seemed to be in good spirits. I didn't see anything wrong with her myself.

Mr. Hogan: That's all, sir. Stand aside.

Mr. Brown: That's all.

FOWLER B. WOOLET next called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name, sir?

1288

A. Fowler B. Woollet.

Testimony of Fowler B. Woollet

Q. And where do you live, Mr. Woollet?

A. 320 N. Thirty-third Street.

Q. Do you rent or do you own your own home?

A. I am buying it.

Q. During the month of October, 1934, by whom were you employed?

A. Berry V. Stoll.

Q. Who is your wife and who was your wife during October, 1934?

A. Ann Woollet.

Q. Was she during that period of time employed by Mr. and Mrs. Berry V. Stoll?

A. She was.

Q. What were her duties?

A. She did household duties there.

Q. What were your duties?

A. Landscape gardening.

Q. Were you employed by the Berry V. Stolls, that is, Mr. and Mrs. Berry V. Stoll, on October 10th, 1934?

A. Yes, I was.

Q. I believe you were not on the premises at the time Mrs. Stoll left there on that day.

A. No, I was not there.

Q. By whom are you employed now?

1289 A. By the Army Air Forces.

Q. You mean, Curtiss-Wright place?

A. No, I am employed by the Army Air Forces. I am not with the Curtiss-Wright Corporation. I am only stationed in that plant by the Government.

Q. You are employed by the Government?

A. That's right.

Q. And how long have you been employed by the Government?

A. Since September 18th, 1941.

Q. Now I believe I called upon you and Mrs. Woollet at your home a few weeks ago.

A. That's right.

Q. About this case, is that correct?

A. That's correct.

Q. Tell the jury whether or not you would furnish me

Testimony of Fowler B. Woollet

with any information or statement concerning the facts of this case.

A. I did not.

Q. You refused to do that, did you not, sir?

A. I did.

Q. Why did you refuse to do that?

A. Due to the fact that I thought it was the proper place to bring out any evidence or any statement here in the court.

1290 Q. All right, sir, with that premise—how long did you work for Mr. Berry V. Stoll after Mrs. Stoll was returned on October 16th, 1934?

A. Approximately five or six days.

Q. Was your wife, Mrs. Ann Woollet, made highly nervous by this excitement out there?

A. She was.

Q. And did she require the attendance of any physician?

A. Yes, sir.

Q. Who attended her?

A. Dr. Shacklette.

Q. From Jefferson town?

A. That's right.

Q. Now I believe you and your wife were questioned considerably by the authorities about this matter?

A. That's right.

Q. Did Mrs. Speed, the mother of Mrs. Alice Stoll, come out to the Stoll home during Mrs. Stoll's absence between October 10th and October 16th?

A. I don't know whether she did or not.

Q. To refresh your recollection, I will ask you if she wasn't there and if she forbade you to make any statement to the police or FBI authorities, or the detectives.

A. No, she did not.

1291 Q. On the evening of October 16th, 1934, what happened to you and your wife, Mrs. Ann Woollet?

A. What date was that?

Q. October 16th, 1934, the date Mrs. Stoll returned.

A. To what extent?

Q. Were you two taken away from the Berry V. Stoll

Testimony of Fowler B. Woolet

estate?

A. Yes, we were.

Q. By whom?

A. By John Tarrant.

Q. The attorney?

A. He was an attorney, yes.

Q. What reason did he assign for removing you and your wife?

Mr. Brown: I don't see what this has to do with it.

The Court: I think that's hearsay again, Mr. Hogan.

Q. Did he take you away from there?

A. Yes, we were taken to the Speed home.

Q. What happened to you at the Speed home?

Mr. Brown: Has that anything to do with this case, Your Honor?

Mr. Hogan: Yes, sir, it sure has. I am leading up—

1292 Mr. Brown: Well, if you lead up to it, you could find out whether it was important or not.

The Court: I expect it is with reference to what Ann Woolet testified to. You are trying to contradict that.

Mr. Hogan: Yes, sir.

Mr. Brown: All right.

Q. Were you taken to the Will Speed home in Louisville?

A. Yes, sir.

Q. You and Mrs. Woolet?

A. That's right.

Q. What was done with you and your wife?

A. Well, we were given a room for the night there.

Q. Where?

A. In the Speed home.

Q. Whereabouts?

A. It was upstairs.

Q. Was it warm or cold there?

A. As well as I remember, the room was evidently cold.

Q. Was your wife hysterical and nervous on that occasion?

A. She certainly was.

Testimony of Fowler B. Woollet

Q. Did you try to get a doctor for her on that occasion?

1293 A. No, I didn't.

Q. Did you ask Mrs. Speed to let you take her to your people, your mother's?

A. Yes, I told her I wanted to leave, I wanted to take her over to my mother's home.

Q. Were you permitted to do that?

A. No, I was not.

Q. Now you stayed there all night, I take it, you and your wife.

A. We did.

Q. The next morning where did you and your wife go?

A. We went back to the Stoll home.

Q. Did you see Mrs. Stoll on that occasion?

A. I saw her for approximately two minutes.

Q. Did your wife see her?

A. Yes, she did.

Q. Did Mrs. Stoll embrace your wife or kiss her?

A. No, she did not.

Q. That did not happen?

A. That did not happen.

Q. Did you hear Mr. Berry Stoll making a phone conversation?

A. No, I did not.

Q. That did not happen, on the morning after—

The Court: No, he said he didn't hear it.

1294 Q. Did you see him using the phone on the morning of the 17th?

A. I don't remember seeing him use the telephone.

Q. To refresh your recollection, I will ask you if you didn't see and hear Mr. Berry Stoll talking to someone over the phone the morning after Mrs. Alice Stoll was returned.

Mr. Brown: I am going to object to that. He certainly can't impeach his own witness. He can show him anything if he wants to refresh his recollection.

The Court: I think he can suggest possibly things that might refresh the witness' recollection, if there is any

Testimony of Fowler B. Woollet

question of his recollection.

Q. And that Mr. Berry Stoll said that she, meaning Mrs. Alice Stoll, his wife, had returned home and had brought home \$25,000.00 with her.

A. I don't remember any conversation like that.

Q. To refresh your recollection, didn't you also hear Mr. Berry Stoll say on that same occasion that the Herald-Post reporters had not acted very nice, that they would gladly see someone killed just to get a good story, but that the Times had cooperated with them very thoroughly--does that refresh your recollection?

A. No, I don't remember anything about that.

1295 Q. Now on Saturday, October 20th, 1934, did anything happen on that occasion that affected you and your wife?

A. On what date?

Q. Saturday, October 20th, 1934. Does the Grand Jury bring to your mind anything that happened on that day?

A. She appeared before the Grand Jury.

Q. Was she ill that morning?

A. She was.

Q. Didn't you request that Mr. Berry Stoll not have her come to the Grand Jury?

Mr. Brown: I submit that is not a function of anybody else, if she had been subpoenaed to appear before the Grand Jury.

The Court: I believe if any protest was made on account of her health that can be brought out.

Mr. Brown: Oh, sure.

Q. Did you protest about bringing your wife to the Grand Jury to testify?

A. I said she wasn't very well and I didn't want her to come, and he said she had been subpoenaed to the Grand Jury and it was very important, and she had to go.

Q. Did she—to refresh your recollection, did he not say she would go even if he had to get an ambulance to take her there?

A. I don't remember that part of it.

1296 Q. At any rate, she was brought down and did testify before the Grand Jury on October 20th, 1934.

Testimony of Fowler B. Woollet

A. That's right.

Q. When did you leave the employment of the Stolls, the Berry V. Stolls?

A. I don't remember what date it was, but it was shortly after my return. I think it was on Sunday.

Q. The next day after your wife appeared before the Grand Jury and testified before that body?

A. I think that's right.

Q. Did you voluntarily leave or were you discharged?

A. I was discharged?

Q. By whom?

A. By Mr. Stoll.

Q. Was your wife likewise discharged?

A. That's right.

Q. Did he assign any reason for your discharge?

A. He was going to close his home up and go away.

Q. Did he do that?

A. Well, I don't know whether he did or not. I have never been back there.

Q. You never have been back there?

A. No.

Q. How long were out of the employment of the Berry V. Stolls?

A. About a year.

1297 Q. Then you did get re-employment with them?

A. That's right.

Q. What time was that?

A. That was in November of 1935.

Q. Do you recall what date that was?

A. No, I don't remember the exact date.

Q. Where was that employment and what were your duties?

A. In Hardyville, Kentucky, as an engineer.

Q. Are you an engineer, Mr. Woollet?

A. I am.

Q. Were you an engineer at the time you worked on the Stoll estate?

A. Yes, sir.

Q. Did you have any difficulty of finding employment

Testimony of Fowler B. Woollet

after you were discharged by Mr. Berry Stoll on October 21st, 1934?

A. Yes, I had my troubles.

Q. Had a lot of them, didn't you?

A. I had several.

Q. Were you able to find other employment?

A. No, I never did get a real good job.

1298 Q. Why?

A. Well people just didn't hire me, that's all.

Q. Did you spend most of the money that you had saved up?

A. I spent all that I ever did save.

Q. You spent all of it following your discharge by Berry V. Stoll. Is that correct?

A. That's right.

Q. Are you acquainted with an attorney by the name of Joseph Hayse?

A. I am.

Q. And his wife?

A. Yes, sir.

Q. Did you and your wife, Ann Hobbs Woollet, ever go to the office of Joseph Hayse and make any statement in connection with the facts in this case?

A. I went to Mr. Hayse, but Mrs. Woollet didn't ever go to his office.

Q. Well did she ever talk to him or his wife at any time?

A. She did.

Q. Where was that?

A. In his home.

Q. And where was his home located?

1299 A. On Confederate place.

Q. And when did you go to see them?

A. I don't recall the month I went to see him in.

Q. Was it not September 1935?

A. It could have been.

Q. Well it was, wasn't it?

A. I don't know definitely.

Q. What was the purpose of your going to Mr. Hayse and his wife? Your purpose and that of your wife

Testimony of Fowler B. Woollet

if you know the purpose your wife went there for?

Mr. Brown: Let me interpose an objection here for this reason: It hasn't anything to do with the case except to rebut Mrs. Woollet. Now the question was specifically asked whether she had not gone to the office of Mr. Hayse and consulted him as an attorney and Mrs. Woollet, apparently very truthful, said that she had not. But now at the home of Mr. Hayse, I submit that is not competent.

The Court: Mr. Hogan, are you familiar with the transcript?

Mr. Hogan: I asked Mrs. Woollet if she had not September 9, 1935, made a statement—

Mr. Brown (Interrupting): I have it in the transcript here. On page 654:

1300 "I will ask you if it is not true that you went to the office of Joseph Hayse, an attorney of this city, together with her husband, Fowler Woollet, and didn't you consult him about presenting a claim against Mr. Berry Stoll and Mrs. Alice Stoll?"

The Court: Now do you have a transcript that you think is different from that, Mr. Hogan?

Mr. Hogan: What is that page number?

Mr. Brown: 654. Now the next thing is by the Court on pages 656 and 657:

"The Court: What is the date?"

"Mr. Hogan: September 9, 1935. Here in Louisville.

"The Court: Whereabouts in Louisville?"

"Mr. Hogan: In the office of Mr. Hayse."

Mr. Brown: Now that is on page 657.

Mr. Hogan: I have not made a statement—

The Court (Interrupting): Well let's get the transcript.

Mr. Brown: Pages 654, the second question. And if you have found that, the next one is 656 at the bottom of the page, and the next is 657 the first three questions and answers.

Mr. Hogan: What was your second page?

Testimony of Fowler B. Woollet

Mr. Brown: Page 656 at the bottom, where you give the date; and 657 where the Court asked you,
 1301 "Whereabouts in Louisville, Kentucky?" And you answered, "In the office of Mr. Hayse."

Mr. Hogan: All right.

Q. Did you consult any other attorney than Mr. Hayse about making any claim against the Berry V. Stolls?

A. She did not.

Q. Did you yourself consult any other attorney than Mr. Hayse about making a claim against the Berry V. Stolls?

Mr. Brown: Now I am going to object to that for two reasons. Unless it is in contradiction of Mrs. Woollet, it has no place in this case. If it—

Mr. Hogan (Interrupting): All right—

Mr. Brown (Continuing): If it is in contradiction of Mrs. Woollet he has answered that his wife did not.

The Court: I don't think there is any testimony of Mrs. Woollet that it contradicts, is there?

Mr. Hogan: It certainly is page 654:

"Did you consult any other attorney in Louisville or elsewhere with reference to making a claim against either one of those Stolls that I have just indicated to you."

The Court: I thought you asked this witness if he had consulted an attorney?

Mr. Hogan: He or his wife.

Mr. Brown: Well, he said his wife did not.

1302 Mr. Hogan: He has not answered it so far.

The Court: You asked him if he did.

Mr. Hogan: Or his wife.

The Court: Well he has answered about his wife; and now I thought you were asking whether he himself did.

Q. Did you do that Mr. Woollet?

Mr. Brown: That is my objection.

The Court: That is the objection. What is that contradictory of?

Mr. Hogan: If Your Honor please I thought I had asked this witness if he had not refused to discuss with me certain facts about this case.

Proceedings

Mr. Brown: You sure did.

Mr. Hogan: Now I have been taken by surprise and I ask—

The Court (Interrupting): Well I don't think you can be taken by surprise when you put a witness on and you don't know what he is going to say. You can prove it by your own witness if you don't know what he is going to say. You take him at your peril.

Mr. Hogan: I know what he said in his statement, if Your Honor please. I would like to be heard upon that because the Chief Justice of the Supreme Court has ruled in a very recent case of Graham and he was sitting specially as a Federal Judge that you could complicate or
1303 impeach your own witness.

The Court: I will be glad to hear you, of course. It is time for the recess anyhow. But doesn't it also raise the question of a privilege communication between attorney and client?

Mr. Hogan: No, sir.

The Court: Wasn't he asking the lawyer about legal advice?

Mr. Hogan: He said he didn't do that.

The Court: Well you are trying to prove that he did, and if he did that is privileged, isn't it?

Mr. Hogan: I want it also for the contradiction of this witness.

Mr. Brown: He hasn't said he didn't confer with a lawyer. He said his wife didn't.

Mr. Hogan: Well let's see about this thing.

Q. Mr. Woolet, did you consult Mr. Dudley Iman about a claim against the Stolls?

Mr. Brown (Interrupting): Well I am going to object to that because it has nothing to do with this case at all.

The Court: What has it got to do with the case Mr. Hogan? We are trying this defendant charged with illegally transporting a kidnapped person in interstate commerce, aren't we?

1304 Mr. Hogan: It shows bias and prejudice upon his part and upon the part of his wife if either one of those talked to an attorney and—

Testimony of Joseph M. Hayse

The Court (Interrupting): Are you showing bias on the part of your own witness?

Mr. Hogan: I think I can do that.

The Court: Can you impeach your own witness?

Mr. Hogan: Yes, sir.

The Court: You put this witness on. This isn't the government's witness.

Mr. Hogan: If you will just let me read the case of Graham I think I can convince Your Honor that I am right.

The Court: All right, I will go and read it with you.

Members of the Jury, we will take a short recess. Do not talk about this case among yourselves or with anyone or allow any one to talk about it in your presence. We will have a ten-minute recess.

The following proceedings were had out of the presence of the Jury and out of the hearing of the Jury in the Court's chambers:

JOSEPH M. HAYSE was duly sworn and was examined and testified as follows:

1305 Examination by The Court.

Q. State your name?

A. Joseph M. Hayse.

Q. What is your age and occupation?

A. 53; lawyer.

Q. How long have you been a lawyer here in the City of Louisville, Kentucky?

A. Since April 1923.

Q. In the general practice of law?

A. In the general practice of law, yes, sir.

Q. Not specializing in any particular one branch?

A. No, sir.

Q. Criminal or civil?

A. No, sir.

Q. Did Mr. Fowler Woollet come to see you either in your office or your home sometime in 1935?

A. In September 1935 Mr. Fowler Woollet and his

Testimony of Joseph M. Hayse

wife—

Q. (Interrupting) Ann Woollet?

A. Yes, Ann Hobbs Woollet came to my office—they either came in or were brought in by someone.

Q. Now, taking it up from that point please detail the circumstances under which they came to you?

1306 Q. What they inquired about and what was their purpose?

A. Well I had been consulted in regard to the Robinson case, and my recollection is that W. K. Powell knew that, and I had discussed it with him. Powell brought these people in and he told me who they were and what he knew, in a general way. And I took their statement and they thought that they had a claim against Berry Stoll at the same time. I took a very thorough statement of the Robinson case and all of its angles and views. There was very little in the statement of Ann Hobbs Woollet and there was very little in the statement of Fowler Woollet that particularly pertains, as I see it, to their own claims against the Stolls. I discussed that with them thoroughly and it was the kind of a case—well I just didn't think there was sufficient merit in it to justify me going into it or trying to handle it.

Q. That is, the claim against the Stoll people?

A. The claim against the Stolls, and I so told them that I was not interested in it and I did not make any contract of any kind with them. They didn't pay me any fee. The first visit was to the office, and I made arrangements with them to come out to my house and Mrs. Hayse took the statement of Ann Hobbs Woollet in her own words and they came back evidently the next night in order to give her time to write it up, and she signed her statement at that time. There were two or three corrections made in it before she signed it, going over it carefully, and then we took the statement of Mr. Fowler Woollet and he gave that statement.

1307 Q. Well, at the time when you took this statement, the rather full statement that you speak of in your home, did you know and understand that they were advising with you with reference to a possible civil claim which

Testimony of Joseph M. Hayse

they had against either Mr. Berry Stoll or the Speeds?

A. Well, that was part of the consultation, yes, sir.

Q. That was involved in the consultation?

A. That was involved, but that was not all of it by any means.

Q. I know, but that was involved in it?

A. Yes, sir.

Cross-examination by Mr. Brown.

Q. Mr. Hayse, was the statement that Mrs. Woolet gave at your home in Confederate Place where you and your wife were?

A. Well they had given me practically the same statement in my office.

1308 Q. I know, but I am talking about the written statement?

A. The original statement had been taken down at the office but was given to my wife at Confederate Place.

Q. Didn't you have a contingent arrangement with Mr. Woolet that if you took the case after an examination of Mrs. Woolet it would be on a fifty-fifty basis, and if you didn't take the case that there would be no charges at all?

A. Mr. Brown, I don't think we ever got that far in discussing the case.

Q. You did not reach any agreement with Mr. Fowler Woolet?

A. No, sir.

Q. You did not attempt to reach any agreement with Mrs. Ann Woolet?

A. I did not attempt or did not reach any agreement for employment with either one of them.

Q. After you advised them that they had no case, that was the end of it, was it not?

A. Yes, that was the end of it so far as they were concerned. There wasn't anything further to it.

1309 *Direct Examination by Mr. Hogan.*

Q. Did you obtain this statement of Mr. Fowler Woolet and the statement of Mrs. Ann Hobbs Woolet with

Testimony of Joseph M. Hayse

a view to using the information that you obtained thereby in those statements in the defense of Thomas H. Robinson Sr. and Thomas H. Robinson Jr.?

A. Yes, sir.

Q. Had you been consulted by anybody with reference to participating in the making of a defense for Thomas H. Robinson Sr. and Thomas H. Robinson Jr.?

A. Yes, sir.

Q. Upon such time as Robinson Jr. might be apprehended and brought to trial?

A. Yes, sir.

Q. Was that the purpose of obtaining those two statements from the two Woollets?

A. Yes, that was the primary purpose of that. I was very particular to get all of the details into this statement because a very small part of that statement would pertain to any claim that they had against the Stolls. An examination of the statement would show that all of it, practically all of it, was pertaining to the Robinsons.

Q. To the defense of one or both of the Robinsons?

1310 A. Yes.

Recross-examination by Mr. Brown.

Q. Who consulted with you?

A. You mean about employment in this case?

Q. Yes, in the employment in the case of old man Robinson?

A. Mr. Joe Donovan of Nashville. I was handling a case with him at the time. He was associated with Mr. Robinson and knowing that I went to Nashville several times, I had two or three conferences with Mr. Robinson. Then the employment for me did not materialize.

Mr. Hogan: When you say "employment", specify what employment.

Witness: For Robinson.

Q. You were not paid any fee by either Robinson?

A. No fee.

Q. Did Mr. Robinson Sr. himself consult with you?

A. Yes, I had two or three conferences with Mr. Rob-

Testimony of Joseph M. Hayse

inson, I don't remember exactly, at Nashville.

Q. Any fee paid you by Mr. Robinson?

A. No, sir.

Q. Any fee paid you by Mr. Robinson Jr.?

1311 A. No, sir.

Q. And who did you have any conference with about representing him?

A. Mr. Robinson Sr. and Mr. Donovan.

Q. Well, Robinson Jr. was not even apprehended at that time?

A. No, sir, but as I understood him to say, in the event he was captured.

Q. You mean, contemplating a future employment at some time?

A. Yes, sir.

Q. Were you ever approached later, after he was apprehended?

A. It seems that after this Miss Jean Breese—

Q. (Interrupting) Now wait a minute. I mean at the time of his apprehension out here in court?

A. No I was not consulted until after he was brought into court and plead guilty. I mean I was not consulted prior to that, but the conference I had was sometime—I will not say how long because I don't remember—but the consultations with me were not immediately prior to his apprehension and bringing into this court, but I was consulted afterwards.

Q. You mean Miss Breese came to see you?

A. I don't think Miss Breese came to see me. If
1312 she did I don't recollect it.

Q. Who came to see you with reference to that?

A. Well I think I had a further conference with Mr. Robinson Sr. and Mr. Donovan, and I think Mrs. Robinson sat in one of these conferences that was down in Nashville.

Q. That was after Robinson had been sent to the penitentiary?

A. Yes, sir, that is my recollection of the way that was.

FOWLER WOOLET was called as a witness in Chambers by the Court and was examined and testified as follows:

Testimony of Fowler Woodlet

Direct Examination by The Court.

Q. What is your version of the circumstances under which you conferred with Mr. Joseph Hayse, the attorney here, in Louisville, Kentucky?

A. You mean at the time I went to him?

Q. Yes?

A. I wanted him to represent me in a legal claim.

Q. And when was that?

A. I suppose that was in September—I don't
1313 know just exactly what month it was.

Q. Of 1935?

A. Yes, sir.

Q. And with what legal claim were you concerned at that time?

A. We wanted something done in order to get me a job with someone so that every time I went for employment, people wouldn't be saying to me it was up to him to get me a job.

Q. Did you go there as a witness—in order to give a statement as a witness in any criminal proceeding?

A. Did I go to Mr. Hayse as a witness?

Q. Yes?

A. I went there to give him these statements to see whether or not—

Q. (Interrupting) As a litigant or as a witness? Were you giving the statement in your own behalf or were you giving the statement as a witness in a criminal prosecution?

A. No, I was giving it in my own behalf.

Q. I will ask you this, I asked you before the stenographer was here and explained to you the rule of law which allows a client to exercise the privilege against disclosure of statements made to an attorney in the
1314 discussion of a legal matter of his own: Do you wish to exercise that privilege?

A. I do wish to exercise that privilege.

Q. And not have your statement disclosed?

A. I do not want any of them disclosed here.

Testimony of Fowler Woollet

Cross-examination Continued by Mr. Hogan.

Q. Did your wife, Mrs. Ann Woollet, go to Mr. Hayse's office and make a statement at any time?

A. She did not.

Q. Well did she go to the office of Mr. Hayse with you?

A. No, sir.

Q. Did she go to the home of Mr. Hayse?

A. That's right.

Q. Did she make a statement there?

A. Yes she did.

Q. Was that a sworn statement?

A. I don't know whether it was a sworn statement or not.

Q. Did she sign any paper there as her statement?

A. Not that I remember. She might have.

1315 Redirect Examination by The Court.

Q. Did she go with you?

A. She went with me to Mr. Hayse's home.

Q. And on the same matter that you went?

A. That same matter, yes, sir.

Recross-examination by Mr. Hogan.

Q. Did you later go to see Mr. Inman?

A. Yes, sir, I sure did.

Q. Did your wife, Mrs. Woollet, later go to see Mr. Inman?

A. No, sir, she has never been in Mr. Inman's office.

Redirect Examination by The Court.

Q. Was that also about a legal claim of your own?

A. Yes, sir.

Q. Do you wish to exercise your privilege on that?

A. Yes, I will waive that, too.

Q. Do you want it told or do you want it kept confidentially?

1316 A. Just keep it confidential like the other.

Testimony of Fowler Woollet

Recross-examination by Mr. Hogan.

Q. As a result of your visit to Mr. Inman's office, did you procure this later employment with the Stolls in November 1935?

A. Yes, sir.

Q. Were you paid any money by the Stolls?

A. I was not.

Q. Was Mr. Inman paid a fee?

A. He was.

Q. By whom?

A. By Mr. Stoll, I believe.

Q. How much was that fee?

A. I don't remember exactly what the fee was.

Q. Was it \$300.00.

A. I don't know.

Q. In that neighborhood?

A. I would not know how much it was.

Q. How was it Mr. Stoll paid Mr. Inman's fee?

A. Mr. Inman and I had an agreement that when we went into this case that any and all proceeds of the case would be divided between us equally; but it so happened that I got my job back and we ruled at that time that
1317 Mr. Stoll was to pay Mr. Inman's fee and whatever Mr. Inman's fee was I don't know.

Q. Mr. Inman was in private practice then, was he not?

A. Yes, sir.

Q. And he presented for you a claim to Mr. Berry Stoll?

A. That is right.

Q. And was your claim as originally presented to Mr. Inman for money or for some other consideration?

A. I do not know what Mr. Inman asked for.

Q. Well, what kind of a claim did you ask him to present to Mr. Stoll?

A. False imprisonment.

Q. Does that relate to the false imprisonment at the Speed home?

A. That is right.

Testimony of Fowler Woollet

Q. And you thought or maintained that that was false?

A. I absolutely did.

Q. And you still feel that way about it?

A. Well I have no prejudice about it.

Q. Well, not that you have any prejudice about it, but do you still feel that your imprisonment at the

1318 Speed home was false?

The Court: He means in violation of your legal rights.

Witness: I do feel that it was in violation of my legal rights.

Q. Did Mr. Inman or any other attorney make any claim against the Speeds against that violation of your legal rights as you term it false imprisonment?

A. I don't know.

Q. How was it arranged that Mr. Berry Stoll would pay Mr. Inman a fee and give you employment?

A. It was arranged between Mr. Inman and John Tarrant. All I know is that Mr. Inman called me to the office and said Mr. Stoll was willing to give me a job and asked me if I wanted a job and I said that is what I had rather have than anything in the world, and Mr. Inman got the job for me and I went down and went to work.

Q. When was that agreement terminated?

A. In 1935.

Q. When?

A. Shortly after the trial here—in November.

Q. When did you see Mr. Inman about your claim?

A. Right after the trial was held here in 1935—I think that trial was in October and I consulted with Mr.

1319 Inman shortly after that.

Q. You had been to see Mr. Hayse on September 9th or 10th, in 1935?

A. Somewhere in that neighborhood. I suppose it was in that month—I don't remember just what month that was.

Q. Did you or your wife so far as you know have any agreement with Berry Stoll before that trial as to your being given employment after the trial?

A. No, there was nothing in there about employment. He never gave me any agreement to that effect, no.

Testimony of Fowler Woodlet

Q. The agreement was not terminated until after the trial or were you or your attorney having consultations, or had you presented your claim before that trial in 1935?

A. I had not.

Q. Did you consult any other attorney except Mr. Hayse and his wife and Mr. Inman?

A. No; that's all.

Q. Your wife did testify in that 1935 trial of Frances Robinson and Thomas H. Robinson Sr.?

A. Yes, sir.

Q. Did you testify in that trial?

A. No.

1320 Q. Had you talked to Mr. Stoll or had your wife talked to him so far as you know before that trial?

A. No she had not.

Q. Had you?

A. No I had not.

Q. You felt that if your wife cooperated and testified in that trial—

The Court: Well aren't we going rather far afield on the question of privileged communication here? Now I am going to have to hold that it was a privileged communication to both Mr. Hayse and Mr. Inman. It was at least the witness' intention to advise with Mr. Hayse as to a civil matter of his own and for no other purpose.

Mr. Hogan: But as against that, we have Mr. Hayse's testimony to the contrary.

The Court: Yes, it was for both purposes. Even on Mr. Hayse's statement I think it would be held a privileged communication. There was a question of lawyer and client and Mr. Hayse took the opportunity to take a complete statement.

I don't know that a client knows how much he ought to say and how much he ought not to say when he goes to the lawyer and the lawyer starts asking him questions.

Mr. Hogan: Nor does the client and lawyer relationship exist if you never have a contract with him.

The Court: It does when you ask him for advice.
1321 vice. Let the ruling be entered that the Court finds

Testimony of Fowler Woolet

on the evidence produced that the relationship was that of attorney and client and the communications, accordingly, privileges.

The following proceedings were had in open court in the presence and hearing and before the jury:

Direct Examination of Mr. Woolet continued
by Mr. Hogan.

Mr. Hogan: Will the stenographer read the last few questions and proceedings?

(At this point the questions were read:)

"Q. Did your wife consult any other attorney than Mr. Hayse about making any claim against the Berry V. Stolls?

"A. She did not.

"Q. Did you yourself consult any other attorney than Mr. Hayse about making a claim against the Berry V. Stolls?

"Mr. Brown: I am going to object to that, etc."

Mr. Brown: Now I will withdraw my objection.

Q. You may answer, Mr. Woolet?

A. I consulted another attorney.

Q. And who was that other attorney?

1322 A. Mr. Inman.

Q. The gentleman sitting right here?

A. Yes, sir.

Q. Was that in reference to a claim you had against the Berry V. Stolls?

A. Yes it was.

Q. Did he handle that claim for you?

A. Yes, sir.

Q. What was the nature of that claim?

A. It was to represent me in obtaining employment.

Q. Well did you obtain employment as a result of that employment of Mr. Inman?

A. Yes, sir, I did.

Q. Was that employment of Mr. Inman looking to your procuring of re-employment by Mr. Berry V. Stoll or the Stoll Oil Company?

Testimony of Fowler Woollet

A. Yes, sir, Mr. Inman represented me and got the connection made for me.

Q. And as a result of his services you were given employment at Hardyville by Mr. Berry V. Stoll?

A. Yes, sir, that is right.

Q. And how long did you continue in his employment?

A. About two years.

1323 Q. Was any fee paid to Mr. Inman in this matter?

A. Yes, sir.

Q. Who paid that fee?

A. Mr. Stoll.

Q. Mr. Berry V. Stoll?

A. Yes, sir.

Q. Do you know or have you been informed what that fee was?

A. I was informed what it was.

Q. And how much was it?

A. \$100.00.

Cross-examination by Mr. Brown.

Q. Mr. Woollet did your wife, Ann Woollet, at any time ever consult Mr. Inman?

A. No, sir, she did not.

Q. Now you testified on direct examination that you had occasion to see Mrs. Stoll a few moments after your return to the Stoll premises on October 17, 1934. Was that correct?

A. Yes, sir.

Q. Did your wife see her at that time?

A. Yes, sir, she did.

1324 Q. What was Mrs. Stoll's condition at that time?

A. Mrs. Stoll was very nervous and she was shaking all over and she was in her bed in the bed room, and we got out of there as quickly as possible after seeing her.

Redirect Examination by Mr. Hogan.

Q. When did you say you got there, Mr. Woollet?

A. That was shortly after I got there from the Speed

Testimony of Fowler Woollet

home.

Q. Was she too nervous to write?

A. Apparently from the way her hands were shaking I would say she was.

Q. Was she too nervous to initial 94 times her initials on 94 five-dollar bills?

A. Yes it seemed that way to me.

Recross-examination by Mr. Brown.

Q. Now there is another question that I overlooked. Mr. Woollet, when did you first consult Mr. Inman if you recall?

A. Yes. It was right after—let me think
 1325 about that a minute. It was in 1935 that I consulted with Mr. Inman, and I think it was either the last part of October or the first part of November.

Q. With reference to the previous trial that was had in this court of Mrs. Frances Robinson and Thomas H. Robinson Sr., I will ask you if it was after that trial or before that trial?

A. It was after the trial.

Q. And at that time Mr. Inman had no connection with the United States Attorney's Office? He was in private practice was he not?

A. Yes, he was in private practice in the Marion E. Taylor Building.

Redirect Examination by Mr. Hogan.

Q. Mr. Woollet, so far as your employment of Mr. Inman, that was a perfectly legitimate employment by you of an attorney to present what you felt was a legal claim. Is that right?

A. That is right.

Q. Yes.

Mr. Hogan: And I want the record to state that we do not intend any reflection whatsoever upon Mr. Inman's services in connection with this matter, only that
 1326 he served as an attorney in the manner that has just been stated.

The Court: That's a lawyer's business.

Testimony of Alvin W. Kirtley

Mr. Hegan: Yes, sir, that's a lawyer's business to make money and serve clients.

ALVIN W. KIRTLEY was recalled by Mr. Brown and was examined and testified as follows:

Recross-examination by Mr. Brown.

Q. Mr. Kirtley I will show you a selective service questionnaire and ask you to examine that and tell the jury whether you signed that?

A. Yes, sir.

Q. You did, didn't you?

A. Yes, sir.

Q. Now I will refer you to Series No. 11 court record, in which appears "I (and then a blank and then underneath it) have or have not (the next is printed) been convicted of treason or a felony", and I will ask you to tell the jury how you answered that?

A. It is "have not" there. I was convicted but I may have looked over that. I did not mean to answer it
1327 that way.

Q. You mean this was a mistake? A mistake in your answering it?

A. Yes. The other fellow filled it out and I signed it.

Q. That was your statement to him?

A. Yes.

Q. And that shows you have not been convicted of a felony, doesn't it?

A. Yes.

Q. Now let's refer to where it has "Other occupational experience" and instructions, "Every registrant shall fill in this statement, activity in form of apprenticeships served", "I have also worked at the following occupations other than my present job." Now your present job is referred to as the Kentucky Baptist Hospital, 810 Barret Avenue taking care of male patients?

A. Yes, sir.

Q. Now when you were asked to give your prior employment, I will ask you to refer to that and tell the jury

Testimony of Alvin W. Kirtley

from what date to what date you swore to the Selective Service Board you were employed by what concern?

A. Well, it is the Louisville Taxicab Company.

Q. From what year to what year?

1328 A. From 1934 to 1938.

Q. Were you employed by the Louisville Taxicab Company, or were you employed by the Kentucky Cab Company, as you have previously testified?

A. I was employed by both of them that year.

Q. Now look at that questionnaire carefully and tell us where you find the name Kentucky Cab Company on there at all?

A. It isn't on there.

Q. You recalled that you had been employed by the Kentucky Taxicab Company at the time you swore to that, didn't you?

A. Yes, but the way I understood it, it just meant so many years. It didn't matter where you had worked.

Q. But for the years 1934 to 1938 you show there that you were employed by the Louisville Taxicab Company. That is the Yellow Cab Company isn't it?

A. Yes. I left the Kentucky Cab Company in the fall of 1934 and went to the other.

Q. Now we will refer to this again. The first page "identification". "Every registrant shall fill in all questions in this series. My name is —", and what have you printed there?

A. Alvin Whitfield Kirtley.

1329 Q. "In addition to the name above given, I have also been known by the name or names of —" and what is there?

A. Not any.

Q. That is blank, isn't it?

A. Yes.

Q. Although at that time you were known by the name of Harry W. Colvin, Harold Colvin, and Alvin W. Kirtley.

A. The way I understood it, they were just wanting a record of my right name in the record.

Q. Well when it says "In addition to the name given above I have also been known by the name or names of

Testimony of Alvin W. Kirtley

—"you did not disclose that, did you?"

A. No, sir, I did not.

Q. I will ask you if this entire questionnaire was not signed and sworn to by you, your signature appearing, "Alvin Whitfield Kirtley, Subscribed and sworn to before me this 12th day of November 1940, Ann Riddlehoover, Clerk, Board No. 76." Now you signed and swore to that, didn't you?

A. Yes, sir, I took it down to Board 76 and this lady told me to sign it and I signed it and gave it to her.

Q. And you also swore to it at that time?

A. She just asked me to sign it.

1330 Q. Didn't she also ask you to swear to it?

A. I didn't understand it.

Q. You mean you do not understand what you are saying sometimes?

A. No.

Q. You mean you do not understand what you are signing sometimes?

A. Yes I do.

Q. You did not look at it before you signed it?

A. I didn't pay much attention. I had a man fill it out for me.

Q. You filled it out to the best of your ability or gave your friend the answers to fill out to the best of your ability?

A. Yes.

Redirect Examination by Mr. Hogan.

Q. That is a rather complicated set of questions contained in that questionnaire?

A. Yes, sir, it is awfully hard. Most people used to have an attorney or somebody fix them out for them.

1331 Mr. Hogan: If Your Honor please, I have a part of an exhibit here. It will take about ten minutes to assemble it. During that time, I think it is proper to ask the Court to admonish the jury about the effect of the contradictory statements of this witness Kirtley, as to the effect of them.

The Court: Members of the jury, when a witness tes-

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tifies, his credibility is always a question for the jury, and either side has a right to test or attack the credibility of a witness for the opposing side. Contradictory statements may be introduced for that purpose and bear on the question of the witness' credibility, that is, as to how much of his story you believe, whether you think he is entitled to be believed a hundred per cent or whether you think there is some doubt or question as to the story as he is giving it to you. The evidence which went to the fact that this witness has previously made contradictory statements with reference to his questionnaire and other like matters bear entirely on his credibility as a witness. So it will be considered by you only in that respect.

Mr. Brown: That is true also as to the conviction of a felony.

The Court: Yes. There has also been some evidence that he had been previously convicted of a felony. Such evidence is directed only as to his credibility. The
 1332 fact that a man has been previously convicted of a felony can be considered by you only in that connection in determining whether or not you believe the story he told you from the witness-stand. Such evidence is to be considered by you only in that connection and in that respect, as bearing on his credibility as a witness.

Mr. Hogan: Now if Your Honor please, I mentioned an exhibit, it will take probably ten minutes to assemble it. I wonder if we couldn't have a little recess.

The Court: That takes us to the adjournment hour. Mr. Hogan, and I expect we will all be ready to adjourn by then. Will you be ready to proceed in the morning at 9:30?

Mr. Hogan: It won't take long to proceed with this exhibit. It is hardly 5:00, and I would like to have it introduced here. I think we can get it by 5:00 o'clock.

The Court: I have had lawyers tell me before it won't take any time to do it. I had a case the other day when the lawyers were going to finish it in two hours. It took a little over a day to get through with it. I don't believe it would be safe to rely upon getting through with that exhibit in ten minutes, and I promised all of you gentle-

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men when we were arranging the time that we would quit sometime between 4:30 and 5:00 each day. I think each day we have gone the full limit. It is ten minutes
1333 of 5:00 now.

Mr. Hogan: I think a little rest will do us all good.

The Court: Members of the jury, we will accordingly adjourn then until tomorrow morning at 9:30. During this intermission, remember the Court's admonition as at other times. Particularly as we are nearing the closing of the case, I want to urge upon each of you more strongly, do not consider this matter with anyone or discuss it with anyone, or allow anyone to talk about it to you or in your presence.

We will convene tomorrow morning at 9:30.

An adjournment was thereupon taken to Wednesday morning, December 8th, 1943, 9:30 a.m.

1334 Court convened at 9:30 a.m., December 8th, 1943, pursuant to adjournment, without a jury, and the following proceedings were had:

The Court: I wish to announce to the defendant, the attorneys and parties present, that I have been advised by the marshal in charge of the jury that two of the jurors are temporarily indisposed this morning and are awaiting some attention from a doctor. It is thought possible that they will be ready to resume their place in the jury-box by the usual afternoon session at 2:00 o'clock. Accordingly, the further taking of testimony will be continued until 2:00 p.m. this afternoon.

Mr. Brown: Your Honor, at this point, outside of the presence of the jury, I want to make an objection to this exhibit which has been put up in this court room. Obviously, it does not duplicate the situation that existed in Indianapolis. Now, if this defendant or his counsel wants to introduce someone to crawl through that window, if this defendant or his witness will hit that person twice over the head with an iron pipe, will bind and gag them and carry them for a period of hours in an automobile, keep them in a closet, bound and gagged, for any period time, show that it was opaque glass on the window; there

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was a screen in the window in the Indianapolis apartment there were no steps, of course, in the Indianapolis apartment, inside or out to simulate that condition. **1335** then possibly this exhibit would be admissible. In the condition it is in before it has been introduced into evidence, I think it is highly prejudicial to allow this exhibit to be in the court room when there is no pretense at simulating the same conditions.

I make the further objection that apparently Mr. Hogan has adopted two theories in this case in preparing this exhibit. If he adopted the defendant's theory of the evidence there would be no need for this window at all because Mrs. Stoll could have walked out the door at any time, and obviously she would never have climbed out of the window if she could have walked out of the door. If you adopt the Government's theory, and as the evidence shows, this exhibit, of course, is not conducive to show anything unless we also have the surrounding conditions that were present in the case of any witness that is introduced here.

The Court: What are the steps, Mr. Hogan?

Mr. Hogan: That's just merely so that a person who demonstrates can approach the window.

The Court: There were no such facilitation for Mrs. Stoll, was there?

Mr. Hogan: No, there wasn't, and, of course, we had the witness Johnson who said he went through the windows, similar windows to this, many, many times.

Mr. Brown: With a ladder. With a ladder.

1336 Mr. Hogan: He did not say ladder.

The Court: He went from the outside in, didn't he, not from the inside out?

Mr. Hogan: He went through the window.

The Court: From the outside in.

Mr. Hogan: Yes.

Mr. Brown: With a ladder. With a step-ladder, which is in the record and which I very carefully checked before I made my objection.

The Court: I would think from what I remember of the evidence, that the steps would not be a proper part to put there regardless of anything else. Certainly there

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weren't any steps in the bath room leading up to the window.

Mr. Hogan: No, there were not. The purpose of it is to show that a person of Mrs. Stoll's body or a person of that build or stature could go through that opening.

The Court: Under the conditions that existed in the bath room without steps to help them. They didn't have steps to help them.

Mr. Hogan: No, sir.

The Court: I would think the steps should be removed.

Mr. Hogan: We will, if Your Honor so rules, remove the steps and simulate the condition that existed.

1337 The Court: How about the height of the window from the floor?

Mr. Hogan: The height is the same.

The Court: The height to the sill of the window there is the same distance from the floor as it was in the bath room?

Mr. Hogan: Yes, sir.

The Court: The size of the window the same?

Mr. Hogan: Yes, sir.

The Court: The glass the same?

Mr. Hogan: The opening is the same.

Mr. Brown: No, sir, the glass is not the same. The screen is not in.

The Court: Wasn't it important that she said, as I remember, that she didn't know what was on the outside of that window?

Mr. Brown: Absolutely.

Mr. Hogan: The testimony was, she said when they raised and lowered the window—

Mr. Brown: No, she did not.

Mr. Hogan: It could have been raised and lowered.

Mr. Brown: No, she did not.

Mr. Hogan: Johnson did.

The Court: Johnson was a very different man
1338 from Mrs. Stoll.

Mr. Hogan: He was a Government witness.

The Court: I know, but their physical condition is much different. Johnson is a pretty husky looking fellow.

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He was the one that did everything that had to be done around the place, wasn't he?

Mr. Hogan: Yes, sir, he is the fellow.

The Court: Mrs. Stoll, of course, is a slight woman. Whether she could get through the window is entirely different from whether Mr. Johnson could get through the window. I think one of the features was that Mrs. Stoll claimed that she didn't see through the window, couldn't see through the window, she didn't know where she might be after she got through the window, if she even tried to.

Mr. Hogan: The point is, she could have raised the window and looked out.

The Court: Maybe she could and maybe she couldn't. It was above her height, wasn't it?

Mr. Hogan: No, sir.

The Court: I don't know whether it was or not.

Mr. Hogan: Well, I will tell Your Honor it is forty-seven and a half inches, and she said she was five feet three.

The Court: I imagine that that defect could be cured by putting paper over the windows or something to
1339 that effect, to show that the windows were not transparent.

Mr. Hogan: Yes.

The Court: Was there a lock on it? There isn't any lock on this, is there?

Mr. Brown: And I want a screen in the window.

Mr. Hogan: There is no testimony that there was any screen.

Mr. Brown: Oh, yes, there was, too. We introduced a picture.

The Court: You all check on the testimony. I think that the exhibit ought to very closely comply with the evidence as to what that window was. It wouldn't do any good to put in an exhibit for the purposes that you are going to put it in where the conditions surrounding it are materially different.

Mr. Hogan: If you feel it is necessary, we will put a screen in it.

The Court: Get this transcript and see whether it says there was a screen in the window. You gentlemen

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can read it. I don't remember whether it said it had a lock on it or not.

Mr. Hogan: No, there was no testimony about any lock.

The Court: What is your recollection, Mr. Brown, on the question of the lock?

1340 Mr. Brown: Yes, there was not only testimony, but there was a picture of the lock which we introduced.

The Court: I don't know whether you have to get priorities these days to get a lock or not.

Mr. Hogan: I think you do.

The Court: Maybe you can make one out of plastic of some kind which for the purposes of appearance will do just as well. I think if there was a screen, that the screen ought to be shown in the window or on the outside of the window. Of course, the dimensions of the window should be carefully checked, the height of the window from the floor. That will give you lawyers something to do this morning while the court is in recess, to check that and see that it is correct.

I am not going to have any woman hit with a pipe in order to make the exhibit competent. I am afraid you might have trouble getting volunteers, but, of course, that fact can be brought out, that whatever condition surrounded the window in the bath room at the time certainly ought to be before the jury. I believe, Mr. Brown, that if we get the physical aspects of the window fairly accurate, that it would probably be admissible.

Mr. Brown: Oh, yes, I am sure.

The Court: You don't insist upon a woman being hit with a pipe.

1341 Mr. Brown: No, sir. I don't know that I can reasonably insist, being a government officer.

The Court: And I think certainly the steps ought to be removed. Now the only purpose of the steps was to help someone to get up to that window to get through.

Mr. Hogan: That's right.

Mr. Brown: Yes, that was the purpose of it.

The Court: Then I don't think the jury ought to see

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the steps even, do you?

Mr. Brown: No, sir.

Mr. Hogan: No, we will remove the steps. I think even Mr. Brown could get through that window.

Mr. Brown: I doubt it, even with the steps.

The Court: I imagine he would have an awful lot of trouble trying it this morning.

Now, are there any other matters to be taken up about that window?

Mr. Brown: No, sir, after it is corrected in the manner you have indicated, we will have a look at it before the jury gets back and then we probably can agree for what it is worth it can go in.

The Court: All right, if there are no other questions to be discussed then, we will adjourn to 2:00 o'clock.

An adjournment was thereupon taken to 2:00 p.m. of the same day.

1342 Met, pursuant to adjournment, at 2:00 o'clock p.m., Wednesday, December 8, 1943, and the following proceedings were had:

The Court: It has been made known to the Court that the juror, Mrs. Davidson, has become ill and is unable to continue with her duties as a juror. The doctor advises the Court that she is in bed and unable to attend any sessions today. It is problematical whether she would be able to continue tomorrow or not.

Accordingly, under the provisions of the statutes, due to her illness and her inability to attend as a juror, she will be discharged as a juror and the one alternate who was sworn will take her place as the remaining juror in the box.

Let an order be entered to that effect, Mr. Clerk.

(At this point the alternate takes the box.)

The Court: I understood by both counsel that the alternate was duly sworn at the beginning of the case.

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Yes, Your Honor.

The Court: Are you ready to proceed, gentlemen?

Mr. Hogan: Yes, sir.

Testimony of Fred Smith

1343 FRED SMITH was called as a witness by the defendant, and after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Fred Smith.

Q. What is your business or occupation?

A. Carpenter.

Q. And how long have you been such?

A. I would say about 8 or 10 years.

Q. Have you had much experience in the construction of homes and buildings?

A. Yes, sir.

Q. Have you built any house or helped to construct them?

A. Both.

Q. Did you prepare, at my instance and direction this exhibit which is before the Court here?

A. Yes, sir.

Q. Tell the Court what that consists of?

A. The measurements, you mean?

Q. Yes?

A. It is 5 by 20 open. The glass is 16 by 16. The height is 47½.

1344 Q. Now have you made any tests, Mr. Smith, with this lower window open to determine the space there when that lower window is raised?

A. Yes, sir, it is 15 inches high.

Q. By what wide?

A. 20.

Q. And what height is that window from the floor?

A. 47½.

Q. And what else is there stationed there in connection with that exhibit?

A. I didn't measure the height on that.

Q. Well what is that there?

A. It is a stool, toilet stool.

Q. Is that the usual and customary toilet stool found in homes and apartments?

Testimony of Fred Smith

A. That is right.

Q. Does the window have a lock in it?

A. Yes, sir.

Q. Does it have a brass handle with which to raise the window from the inside?

A. It does.

Q. Does it have a screen on the outside with hooks that fasten on the inside?

A. That's right.

1345 Q. May those hooks on the screen be loosened from the inside?

A. Yes, sir.

Q. Is that window capable of being raised and lowered?

A. Yes, sir.

Mr. Brown: No questions.

Mr. Hogan: If Your Honor please, I will have to offer myself as a witness for the purpose of connecting up these exhibits.

Mr. Brown (Interrupting): That will not be necessary.

Mr. Hogan (Continuing): That these measurements are what I found to be in the apartment.

Mr. Brown: If you say they are, I will agree to that.

The Court: I believe you all agreed on that this morning.

MARJORIE KIRCHHUBEL was called by counsel for the defendant as a witness and, after having been first duly sworn, was examined and testified as follows:

1346 Direct Examination by Mr. Hogan.

Q. What is your name?

A. Marjorie Kirchhubel.

Q. Where do you live.

A. 2144 Gaubert.

Q. By whom are you employed?

A. The L. & N. Railroad.

Q. What is your height?

Testimony of Marjorie Kirchhubel

A. Five feet three inches.

Q. What do you weigh?

A. About 119.

Q. Now, Miss Kirchhubel, I will ask you to come before this jury and demonstrate, or attempt to raise the window, stand upon the toilet seat and see if you are able to raise the window and push the screen out and go through that window from the top of that toilet seat?

Mr. Brown (Interrupting): Now wait just a moment. I do not recall any testimony that Mrs. Stoll was wearing slacks; or that she was attired in any way resembling this witness. I think the testimony definitely shows that she had on high-heeled shoes, from Sachs, 6AAA.

Mr. Hogan: There is no testimony to that effect.

Mr. Brown: Yes there is.

1347 The Court: Well the way to find out is to look at the transcript.

Mr. Brown: That is how she gave the information to Robinson to have Miss McHenry identify her.

The Court: You gentlemen both have the transcript. Suppose you get it out and look at it.

Mr. Hogan: Well, I submit that that really is not important anyway because this witness is of the size and stature of Mrs. Stoll.

The Court: Well, you didn't expect her to change from a dress into slacks in there if she didn't have slacks, did you?

Mr. Hogan: No, but—

The Court (Interrupting): But here is the point, in the condition that she was in then, she could get out, isn't it?

Mr. Hogan: Yes.

The Court: Then you will have to have someone in her condition.

Mr. Hogan: But it doesn't make any difference whether she had on a dress or whether she had on—

The Court (Interrupting): I think that is rather material.

Mr. Brown: I have examined the transcript and
1348 there is no doubt but what she had on a dress, high-

Testimony of Marjorie Kirchhubel

heeled shoes, Sachs 6 AAA.

The Court: Well, let the witness be attired in a similar way in which Mrs. Stoll was attired.

Mr. Hogan: Well, we will postpone the demonstration until we can get the demonstrator attired in that same manner then if that is what the prosecution wants.

Mr. Brown: No, I don't want it.

The Court: Well I think that's proper. (To the witness): Have you any high-heeled shoes?

Witness: Not with me.

The Court: How long will it take you to get them?

Witness: I could get home and back here in about a half an hour.

Mr. Hogan: And bring a dress.

WILLIAM K. POWELL was called by counsel for the defendant as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. William K. Powell.

1349 Q. Where do you live?

A. 3019 Greenwood.

Q. Were you ever employed by the Louisville Police force?

A. Yes, sir.

Q. For what length of time?

A. About 16 or 17 years.

Q. What were your duties in connection with that position?

A. Well I was patrolman, I was a Sergeant Police and I was a Detective.

Q. Do you know Mrs. Ann Woollet?

A. Yes, sir, I met her.

Q. During the year 1935 did you meet her?

A. Yes, sir.

Q. Tell the circumstances of your meeting her?

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A. Well it is a sort of a long story—it was through her mother-in-law, Mr. Woolet's mother.

Q. What was the occasion of Mr. Woolet's mother making you acquainted with Mrs. Ann Woolet?

A. She had them to—

Mr. Brown (Interrupting): I don't want him to detail any conversation.

Q. No, don't detail any conversation. Well, did
1350 or not on or about September 9, 1935, Mrs. Ann Woolet come to your home and have a conversation with you?

A. Yes, sir.

Q. Tell the Court what she said?

Mr. Brown: Now I will object to that. There was no foundation laid for any statement that she made at any time.

The Court: This would be to contradict Ann Woolet, would it not?

Mr. Hogan: Yes, sir.

The Court: What point or what question is it that you wish to contradict? Get the transcript on it.

Mr. Hogan: I asked her if she made certain statements and she said she had not.

(At this point counsel have a conference with the Court at the bench.)

The Court: Objection sustained in that the definite part of the conversation should be referred to which might be the basis for contradiction of the witness, Ann Woolet.

Mr. Hogan: Exception.

Q. Now did Mrs. Ann Woolet ever have any discussion with you as to whether or not she felt aggrieved or that she had any claim against either Mrs. Alice Stoll or Mr. Berry Stoll?

1351 A. No, sir, there was nothing said that day.

Q. What was the gist of her conversation with you on that day?

Mr. Brown: I object to that.

The Court: Now we are not going into the gist of the conversation. You are trying to contradict any statement that Ann Woolet said. You gave me the direct statement

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you wanted to contradict and that you wanted to ask him about. Now if you want to call that to his attention, you can. Let's don't go into any general gist of any conversation.

Q. Well did Mrs. Woollet consult an attorney in your presence about this grievance she had against Mr. Stoll or Mrs. Stoll?

A. She never said anything about any grievance. She consulted or talked to an attorney—

The Court (Interrupting): Now were you present?

Witness: Yes, sir.

The Court: All right.

A. (Continuing) About what happened.

Q. Did she tell you what happened?

A. Yes, sir.

Q. And now don't answer this question until the Court rules on it. What did she tell you happened?

The Court: Oh, no. Ask him if she made such and such a statement. That's what you want to direct his
1352 attention to.

Q. I will ask you if in your presence Mrs. Ann Fowler on that occasion made this statement?

Mr. Brown: Now I want to inquire into this a little more before this question is answered. Mr. Hayse testified nobody was—what attorney was it, Mr. Powell? What attorney was it?

Witness: Hayse—Mr. Joe Hayse.

The Court: Where?

Witness: At my house.

The Court: Where was that?

Witness: At 3019 Greenwood.

The Court: Louisville, Kentucky?

Witness: Yes, sir.

The Court: When?

Witness: About the 8th or 9th of September of 1935.

Mr. Brown: That is directly contrary to what Mr. Hayse said yesterday.

The Court: Was Mr. Hayse present then?

Witness: Well, Judge—

The Court (Interrupting): Well was he or was he not?

Testimony of William K. Powell

Witness: He was present and heard her say—she talked to me—

1353 The Court (Interrupting): Well now never mind what he heard—I was just asking you if he was present. Was he present then?

Witness: Yes, sir.

The Court: All right, go ahead and ask your questions.

Q. I will ask you if on that occasion Mrs. Woollet didn't say these words, meaning Mrs. Stoll—

Mr. Brown (Interrupting): I don't want any meaning. I want to know what she said.

Mr. Hogan: All right.

Q. (Continuing) "She (meaning Mrs. Stoll—

Mr. Brown (Interrupting): Now I am going to object to that unless she said "meaning Mrs. Stoll".

The Court: Well I expect the context shows what the reference is to.

Mr. Hogan: That is correct, Your Honor.

The Court: Let the record show that the reference by the attorney means she referred to Mrs. Stoll.

Q. (Continuing) "She didn't look at him mean or anything, but just looked at him. I suppose you would call it a faint smile but didn't crack her face."

Mr. Brown: Now I am going to object to that, on this ground, that he was limited as to going into the question of grievance. Now what has that to do with grievance on the part of Ann Woollet?

1354 The Court: I think Mr. Hogan asked Ann Woollet all of those questions, one right after the other, and she said she didn't remember, is my recollection of it.

Mr. Brown: And Mr. Hogan also asked and said, "Didn't you go to the office of Mr. Joe Hayse?" "Didn't this happen in the office of Mr. Joe Hayse?" And Mr. Hayse yesterday also said it happened in the office of Mr. Joe Hayse. Now I submit he is trying to show something that happened at 30-something Greenwood Avenue for which no foundation whatsoever has been laid; and Mrs. Woollet's attention certainly was not drawn to Mr. Powell or anything on Greenwood Avenue.

The Court: Look back in your transcript and see if

Proceedings

this happened at Mr. Hayse's home rather than on Greenwood Avenue. And for the purpose of the record, counsel can agree, I suppose, that Conferdate Place and 3019 Greenwood is several miles apart?

Mr. Hogan: Yes, Your Honor.

The Court: I believe that appears right at the part where you began to read from that typewritten sheet that you had. You laid your basis right then, Mr. Hogan.

Mr. Hogan: I am trying to find that place, if Your Honor please.

Mr. Brown: That he said in the presence of
1355 Mr. Hayse and Mrs. Nellie Stoeß Hayse, his wife—

The Court (Interrupting): Just a minute. Now let me announce to all of the spectators present, as I have announced two or three times before, unless you are willing to stay in the court room while the witness is on the stand, please don't come in the court room. We have to stop this running in and out of the court room while the witness is testifying. It is disconcerting to the witness and to the parties and to everyone and to everyone concerned in trying to handle this trial. When a witness is on the stand, don't come in. Don't try to get up and leave while a witness is on the stand giving his testimony.

Mr. Hogan: Now here is the point in the testimony.

Mr. Brown: I suggest we step up to the Judge's bench.
 (Counsel and the Court have a conference at the bench.)

Mr. Hogan: (After conference) I will make an avowal that if the witness were permitted to state—

Mr. Brown (Interrupting): Wait a minute. We are not going to have any speech right here before the jury.

Mr. Hogan: I will make it out of the hearing
1356 of the jury. We can go out of the room because Mr. Powell has a deep voice.

The Court: Just a minute. Now are you going to ask this witness any other questions and make any other avowal?

Mr. Hogan: No, I don't think so.

The Court: If so, let's make them now so we will not have to be running back and forth every time you make an avowal.

Testimony of William K. Powell

Mr. Hogan: I will ask him some questions now.

The Court: I mean, on the rebuttal phase of it?

Mr. Hogan: No.

The following testimony was taken out of the hearing and out of the presence of the jury by counsel for both sides before the reporter:

Direct Examination by Mr. Hogan.

Q. Now, Mr. Powell, did Ann Woollet on that occasion and in your presence and hearing and to you say these words or words to this effect:

"About this time she calls me up there and wants me to bring her some pumpkin seed, and I took them up there and Robinson comes up and smiles at her (meaning Mrs. Alice Stoll). I thought it was just politeness then."

Did Mrs. Woollet make that statement to you?

1357 A. No, she did not say it that way.

Q. Then how did she say it?

A. She said she went upstairs for seed or something. I think she said she was making pumpkin pie and she said Mrs. Stoll said to save her some pumpkin seed.

Q. Did she on this occasion (meaning Mrs. Fowler Woollet or Mrs. Ann Hobbs Woollet) say to you on this occasion at your home at 3019 Greenwood Avenue, in Louisville, Kentucky, these words, or words to this effect:

"She didn't—"

Witness: Can't I just tell you gentlemen?

Mr. Brown: Yes.

Mr. Hogan: Just tell the story.

Witness: Let me tell you all.

Mr. Brown: Talk so the stenographer can hear you.

A. Like she was telling me—

Q. (Interrupting) When you say "she" say whether it was Mrs. Stoll or Mrs. Ann Woollet.

Mr. Brown: Or any other person.

A. I would like to explain why she came there and

Testimony of William K. Powell

what she was doing there.

Mr. Brown: All right, explain it all.

A. I got her husband a position, or job, and they came there and told me about how the Stolls had treated
1358 them.

Q. You are referring to Mr. and Mrs. Stoll?

A. That was Mrs. Ann Woollet and her husband was with her. Foster I think his name is.

Mr. Brown: Fowler Woollet.

A. Yes, Fowler Woollet. And she commenced telling me—

Mr. Brown (Interrupting) Let me interrupt you. Was Mr. Joe Hayse there at that time?

Witness: No, sir.

Mr. Brown: All right; go ahead.

A. The mother, Woollet's mother, had told me about this and about them not having no job, and she began to tell me about being there and that their attorney, Stolls' attorney, came and called them and told them that they had to go over to Mrs. Speed's and stay all night, that Mrs. Stoll was coming home, and they kinda objected—

Q. (Interrupting) Who do you mean, "they"?

A. The Woollets—Woollet and his wife.

Q. Ann Woollet?

A. Yes. And they taken them over to Mrs. Speed's and left them over there all night out in a house in the yard, she says. And the next morning Mrs. Speed came and told them that they could go back home, and she had called a taxicab and the cab came and they took

1359 them back. She says when they got there Mr. Stoll, the husband of Mrs. Stoll, and a federal man was in the yard. They drove up and got out and Mr. Stoll met them and told them that he didn't want them any more, that he had discharged them, and Woollet then asked about what was he going to do and he says "Close the house up or give it away, I am not going to stay here." And Ann Woollet says, "I would like to see Mrs. Stoll and tell her good-bye." And Mr. Stoll said, "The doctors have refused to let anyone see her." She said about that time Mrs. Stoll came from over the hill back of the

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house with a gun on her shoulder, with two or three dogs following her, and that she ran up and grabbed her and kissed her.

Q. Who ran up?

A. Mrs. Stoll.

Q. And grabbed who?

A. Mrs. Woolet, and kissed her.

Q. Did Ann Woolet tell you anything else about this matter you are talking about?

A. Yse, sir. She said that when he came there—it seemed as if the telephone was out of order and he came there—

Q. (Interrupting) “He”? Who was “he”?

A. Robinson. It seemed as if Stoll’s telephone **1360** was out of order and Robinson came there as the man to fix it—the repairman. And she said she didn’t know whether her or Mrs. Stoll opened the door, but Mrs. Stoll says, “What are you doing here?” And he says, “I have come after you.”

Q. All right, go ahead.

A. Ann says, “They went upstairs and were upstairs quite a while and I was in the basement ironing.”

Q. Who was upstairs quite a while?

A. Mrs. Stoll and Robinson. And that she was in the basement ironing, and that she went upstairs and asked Mrs. Stoll if he could fix it and Mrs. Stoll said, “He thinks he can if you will help him. He wants you to hold the wires.” And she said, “He came up close to me and grabbed me and fastened my hands to a chair.” And she said they left.

Q. Who is “she”?

A. Ann Woolet.

Q. Says who left?

A. Mrs. Stoll and Robinson.

Q. All right. Where did they go? Where did she tell you they went?

A. She wiggled her chair to the window—seemed like she was in the middle of the room somewhere and she got to the window where she could see out and they **1361** got in the automobile and drove off and that it was

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about ten minutes before Mr. Stoll came home.

Q. Did Ann Woollet tell you anything about Ann Woollet cleaning up Mrs. Stoll's bedroom?

A. Yes, sir, she says she went upstairs to clean the room up, either the first or second morning after Mrs. Stoll had come home, and she raised a pillow and there was a large bundle or amount of money there, and also in a chair and she said it kinda excited her, and she saw so much money she didn't know what about it.

Q. Did Ann say whether or not Robinson hit Mrs. Stoll on the head with a pipe or a blunt object?

A. No, sir, she did not say anything about that.

Q. Did she say anything about any blood around the place there when Mr. Robinson and Mrs. Stoll left?

A. No, sir.

Q. Did Ann ever say anything to you about her off days?

A. Yes. It seemed as if Ann had a day off a week, and Mrs. Stoll would bring her to town in Mrs. Stoll's car, and they would go to the Second and Broadway to Stoll's Filling Station and park the car and go inside the office and sit down and she would tell Ann a certain hour to be back and she would call a friend up—

Q. (Interrupting) Who is "she"?

1362 A. Mrs. Stoll. She would call a friend up out on Third Street to meet her there.

Q. Did she say anything about Robinson being in the station?

A. He was the attendant, she said.

Q. Did she say whether or not Mrs. Stoll knew or talked to Robinson on those occasions?

A. She said she would go in and park her car and he would be there and they would go into the filling station, and Mrs. Stoll would tell her about being there a certain hour and—

Q. (Interrupting) Did Mrs. Ann Woollet ever say to you that Mrs. Stoll talked to Robinson at the filling station?

A. No.

Q. Did she say she saw him there?

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A. Yes, she said she saw him there.

Q. Did she tell you whether or not Robinson ever parked Mrs. Stoll's car for her?

A. No. She said they would drive in there and park and go out and go in the office.

Cross-examination by Mr. Brown.

Q. Mr. Powell, don't you know, as a matter of
1363 fact that Mr. Robinson had not been in Louisville to work since 1931?

A. No, sir, I did not know a thing about it.

Q. And don't you know that the Woolets only began to work for the Stolls the early part of 1933?

A. I don't know a thing about that.

Mr. Brown: Well of course I object to this testimony.
(At this point the hearing in private concluded.)

Back in the presence of the jury the following proceedings were had:

By the Court: I believe possibly counsel for the defendant should designate for the purpose of the record the particular questions in the transcript that you claim that these answers are contradictory of. You designated them to me at the desk but it does not appear in the record.

Mr. Hogan: We designated them more or less by stipulation.

The Court: It doesn't appear in the record.

Mr. Brown: I don't know that we stipulated.

Mr. Hogan: We agreed that he would narrate his story.

1364 The Court: Well I want the record to show that I gave counsel the opportunity to indicate to me the particular questions that he thought these answers were to rebut, and I think those ought to be put into the record now.

Mr. Hogan: All right.

The Court: Are the questions numbered?

Mr. Hogan: No they are not.

Mr. Brown: The pages are numbered.

The Court: You read them to me here at the desk a little while ago.

Mr. Hogan: Yes. Pages 652, of course not all of that

Testimony of William K. Powell

page, but part of that page, 653, 654, 655.

The Court: That is of the original transcript which, of course, can be identified later, if necessary.

Mr. Hogan: Wait a minute. There may be others; I will take a look.

The Court: That is just the point, if there are others, I want them called to my attention now.

Mr. Hogan: Pages 656, 657—

The Court: Now, were those read to me at the desk?

Mr. Hogan: No, not at the desk.

The Court: Well I asked you to tell me at the desk what you were relying on and now you are putting
1365 something in that you didn't read to me. Now I have got a right to rule on what you are relying upon, and don't put in something now that was not called to my attention.

Mr. Hogan: Well, if Your Honor please, I am trying to get this straightened out.

The Court: Well I don't think you are straightening out something with me if you put something in the record now that wasn't called to my attention before.

Mr. Hogan: Well if I didn't call it to your attention I will call it now—

The Court (Interrupting): All right.

Mr. Hogan: What I am trying to contradict are the quoted questions in the printed transcript that I have asked Mrs. Ann Woollet to which she said, "No" or "Don't remember," or some similar denial.

The Court: Well those questions, but I had particular reference to the time and place?

Mr. Hogan: We covered that by the other pages a minute ago.

Mr. Brown: There is no mention in the transcript of any evidence such as Greenwood Avenue or any man by the name of Powell.

Mr. Hogan: Yes, in this transcript but in the transcript with reference to Joe Hayse.

The Court: All right.

1366 Mr. Hogan: May I state those pages?

By the Court: Yes.

Testimony of Mrs. Jessie Robinson

Mr. Hogan: Pages 656, 657, 658, 659, 660, 661, 662, 663, 664, and 665.

The Court: Those all are the questions and answers that you asked the witness about?

Mr. Hogan: Yes.

1367 MRS. JESSIE ROBINSON, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.—

Q. What is your name?

A. Mrs. Jessie Robinson.

Q. You are the mother of the defendant, Thomas Henry Robinson, Jr.?

A. I am.

Q. Where do you live, Mrs. Robinson?

A. At 1211 Cedar Lane, Nashville.

Q. Is your husband living or dead?

A. No, he is dead.

Q. What was his name?

A. Thomas Henry Robinson.

Q. How old are you, Mrs. Robinson?

A. I will be sixty-eight years old next month—January.

Q. When was your son, Thomas Henry Robinson, Jr., born?

A. May 5th, 1907.

Q. Did you have any other child or children than he?

A. No.

1368 Q. What school or schools did he attend during his early years?

A. He attended Ross School.

Q. A little bit louder, if you don't mind.

A. He attended Ross School in his early years.

Q. What was your husband's business?

A. He was a bridge contractor with the Nashville Bridge Company.

Testimony of Mrs. Jessie Robinson

Q. How was Tom's early life spent—Tom, your son?

A. Just as any other boy's would be.

Q. Was it a normal life, in early life?

A. Very much so.

Q. What other school did he attend after leaving Ross School?

A. Well, he became ill before he attended Wallace University.

Q. Did he ever sustain any personal injuries or blows upon his head or face during his childhood?

A. Yes. At one time he was struck or hit on the cheek by a horse when we were visiting in Ohio at the home of his—at least, my aunt.

Q. Was that a mild or severe kick?

A. It was quite a severe blow.

Q. What did it do to his face or head?

A. Well, it has made quite a large place, it has left a place on his cheek.

1369 Q. Did he attend Sunday School and Church in his early childhood?

A. Yes, always went to Sunday School and Church.

Q. What Church did he go to?

A. He went to the Presbyterian Church, the Woodland Street Presbyterian Church.

Q. Did he participate in the activities of that church?

A. Yes.

Q. And its religious and social functions?

A. Yes.

Q. How long did he attend that church, regularly?

A. Well, until he was grown, about—Oh, until he was twenty years old, probably.

Q. Did he have any malady or disease in his childhood or early manhood?

A. Yes, he had several.

Q. Tell us about those.

A. When he was about thirteen or fourteen—about fourteen years old, he had a severe case of malaria fever and was ill for about two months, and after that it terminated into T.B.

Q. Was any treatment afforded him or rendered him

Testimony of Mrs. Jessie Robinson

for his tuberculosis?

A. Yes. He was taken to the Davidson County
1370 Hospital, and he stayed there for eleven months.

Q. Did he sustain or contract any other illness or disease while he was in the tuberculosis hospital?

A. Yes. He had double pneumonia and was taken from there into town, to the hospital, for treatment.

Q. Did he ever have any pleurisy?

A. Yes. This was pneumonia and pleurisy together.

Q. And about what age was he when he had this tuberculosis, pneumonia, and pleurisy?

A. He was about fifteen.

Q. Did he lose any time from school or his studies while he was in this hospital?

A. He was out of school for a year or more.

Q. To what school did he go after he returned from the tuberculosis hospital?

A. He entered Wallace University, a prep school.

Q. How many years did he attend that school?

A. Three.

Q. And where is Wallace Preparatory School?

A. It was on Broadway.

Q. In Nashville?

A. In Nashville, Tennessee.

Q. Did he graduate from that school?

A. No.

Mr. Brown: Just a moment, Your Honor, I am
1371 going to object to that.

The Court: Objection overruled. Repeat the question.

(Question read by the reporter, as follows:)

"Did he graduate from that school?"

A. No, he did not graduate.

Q. After leaving the Wallace Preparatory School, did he attend any other school?

A. Yes. He went to Vanderbilt University.

Q. And about what age was he when he entered Vanderbilt?

A. Nineteen.

Testimony of Mrs. Jessie Robinson

Q. Was there any lapse of time between his leaving Wallace and entering Vanderbilt, other than the usual summer vacation period?

A. No.

Q. And what course of studies did he take at Vanderbilt?

A. He studied law.

Q. How long did he go to Vanderbilt?

A. He was there a year and a half, a little more than that—no, I am mistaken about that. He was there two years, two years and several months of the last year.

Q. Did he graduate from Vanderbilt?

A. No.

1372 Q. Was he a normal child up to the time he was in Vanderbilt?

A. Practically.

Q. All right, did anything unusual in his life happen while he was at Vanderbilt?

A. Yes.

Q. Will you tell the jury about that?

A. While Tom was at his fraternity house one morning—

The Court: Just a minute, gentlemen. This witness can testify as to what she knows of her own knowledge, but what was told her by the defendant or by other people I don't think is competent.

Q. Don't tell any conversation.

The Court: Were you at the fraternity house?

The Witness: No.

Q. Don't attempt to do that, Mrs. Robinson. Just tell what you know and what you observed.

The Court: Well, if she wasn't at the fraternity house she didn't observe it.

Q. Well, did you notice any change in his personality while he was attending Vanderbilt?

A. Yes.

Q. Was he a member of any fraternity while he was attending Vanderbilt?

1373 A. He was a member of two fraternities, the law fraternity and the social fraternity.

Testimony of Mrs. Jessie Robinson

Q. What change in his personality manifested itself that you saw yourself?

A. Well, Tom became very much depressed after this marriage, this forced marriage, and he lost interest in his studies and he quit school. When he entered the last year of school, he stopped school. He was not taken out of school, but he just quit of his own accord.

Q. Did he marry somebody under force or duress?

A. Yes, he married.

Mr. Brown: I don't think she knows anything about that.

The Court: Were you present, Mrs. Robinson?

The Witness: No, I was not present.

The Court: That was told to you then. You don't know anything about it except from what you have heard?

The Witness: No, I don't know anything about it, but I know it is true.

The Court: I cautioned you once or twice, Mrs. Robinson, that you do not tell the jury unless you know it. If it is something that someone told you, your son told you, or your husband told you, if you don't know it of your own knowledge and you were not present, please don't state that to the jury.

1374 Q. Did he live with this person that he married?

A. No.

Q. Did that marriage have any effect on him, or seem to, on his personality?

A. Yes, quite a bit.

Q. Suppose you tell us about that.

A. At that time Tom was enjoying the privileges of a very nice social life, he was going to parties, tea dances, having dates with all the nice girls, and after this marriage he was just ostracized from all of his former friends, and it just depressed him, and he brooded over it a lot, and he just finally lost interest in his studies altogether and we just didn't know what to make of him.

Q. How did his behavior or change in behavior at home manifest itself?

A. Tom just—he just was so depressed over all of it, he brooded over all of it, he just went all to pieces.

Testimony of Mrs. Jessie Robinson

Q. What kind of a personality had he had before this marriage?

A. Very pleasant personality.

Q. What kind did he have following this marriage?

A. Tom became irritable so that we could hardly live with him.

Q. Will you explain what you mean by that expression?

1375 A. Well, he would just go into tantrums over nothing, and just have regular brain storms, and we didn't know what in the world was the matter with him.

Q. What would he do in these tantrums or brain storms?

A. Well, he would do all sorts of things.

Q. Tell some of them.

A. Lots of times he would throw things all over the house, and he would curse me, he cursed me, and one time he struck me, and his father got up and slapped him, and then he said he was going to kill his father, and he got a gun, and I stepped in between them.

Q. Had he had that kind of personality before that marriage?

A. No.

Q. With reference to his behavior or misbehavior and obedience to you and his father before this marriage, how was it—good or bad?

A. Tom was an awfully nice boy clear up until that.

Q. Did you ever notice any change in the expression of his eyes after this marriage?

A. Yes, I did that.

Q. Can you describe that?

A. His eyes, the pupils of his eyes would dilate so that they were—I don't know, it was really frightening to see his eyes at times.

1376

Q. Can you compare his expression with any other expression you have ever seen or known about?

A. No, I cannot.

Q. Would you say it was a stare?

A. Yes, a stare, one of these wild—I don't know, just one of these crazy stares—I don't know.

Testimony of Mrs. Jessie Robinson

Q. What happened to the marriage to this girl?

A. There was a divorce.

Q. Who obtained the divorce, she or Tom?

A. Tom obtained it.

Q. Was there any child born of that forced marriage?

A. Yes, there was.

Q. Now, after the divorce of Tom to this girl or woman, what did he do then? Did he go to work or did he stay at home, or what?

A. No, he stayed at home.

Q. What was his demeanor or conduct at home?

A. He was just all to pieces.

Q. Did he ever marry again?

A. Yes. He married within a year, I think, after this other marriage.

Q. How was his married life with the second person, with reference to whether it was docile or stormy?

A. It was quite stormy.

1377 Q. Well, can you tell of any actions on the part of your son that you say amounted to stormy actions?

A. Well, they hadn't been married but a short while—

The Court: Now just a minute, Mrs. Robinson, the ones that you saw, not the ones that were told to you.

Q. Things you, yourself saw.

A. One time Frances took me to the store—

Q. Who is Frances?

A. That's Tom's wife.

Q. Second wife?

A. His second wife.

Q. All right.

A. And Tom was always awfully jealous and suspicious, and we hadn't been gone but about fifteen minutes when Tom followed us to the store and he told Frances to come out, he wanted her to go home with him, and he made her go home with him and left me at the store. Oh, after probably a half hour, he came back after me without Frances, and when I got back Frances—the dress she had on when she went with me was all torn in shreds, they had quite a fuss.

Q. Did he ever go into those rages or tantrums at

Testimony of Mrs. Jessie Robinson

any other time during his married life to Mrs. Frances Robinson?

A. Yes.

1378 Q. Tell the jury some of those things that he did.

A. Another time he was dressing and a shirt he had on happened to be one—to have gotten misplaced, it was his father's shirt, and he took that and tore it in shreds.

Q. Are those just isolated incidents or did those incidents or like incidents occur with frequency?

A. Quite often. Tom would go into these violent brain storms over no seeming reason at all, and we wouldn't know just what to make of it.

Q. Did he continue to be a good mixer in society or did his attitude towards society change?

A. No, he shunned society, he kept away from everything, just seemed like he withdrew into himself, he just didn't want to go around anyone, he didn't even want to go around us, kept away as much as he could from us.

Q. Did he continue in his church?

A. No, he stopped church.

Q. Why did he quit going to church?

A. He thought the preacher was directing all his—
Mr. Brown: I object to that.

The Court: What his thoughts were, of course, were not known to the witness.

Q. Did he tell you why he quit?

The Court: That doesn't help it any.

1379 Q. Did he quit going to church?

A. Yes.

Q. Had he been active in any church functions before this happened?

A. Yes, he had always gone to all the Sunday School and social gatherings.

Q. Was he ever a Boy Scout?

A. He belonged to the Boy Scouts and DeMolay, both.

Q. Did he continue his activities with these social functions and Boy Scouts after this trouble that he had had?

A. Of course, after he got to be a certain age he didn't

Testimony of Mrs. Jessie Robinson

take much active part in the Boy Scouts, but he did withdraw from the DeMolays.

Q. Now, did he ever obtain steady employment, or, rather, did he work steadily or was he unstable?

A. No. At the time he married Frances he was working at the Wayne Lumber Company and worked there just a short while.

Q. How long did he work there, if you know?

A. Two or three months, I am not sure which, but just a short while.

Q. And after his severance of connections with the Wayne Lumber Company, was he unemployed for awhile?

A. Yes.

Q. Was Tom ever adjudicated a lunatic?

1380 A. He was.

Q. Once or more occasions than that?

A. Twice.

Q. Do you recall the year of his first adjudication as such?

A. I think it was in 1929. I am not sure about that, but I think it was in 1929.

Q. Now that was following a period in which he was involved in some charges, criminal charges, in the State of Tennessee?

A. Yes.

Q. And for which he had been indicted?

A. Yes.

Q. Was he committed to any lunatic asylum or hospital?

A. Yes. He was sent to Central State Hospital for observation, for a period of observation, about two or three weeks, and he was brought back into court and sent back to Central State Hospital.

Q. How long did he stay at the Central State Hospital as a result of that commitment?

A. Eleven months.

Q. Did the court commit him?

A. Yes.

Q. Eleven what?

A. Eleven months.

Testimony of Mrs. Jessie Robinson

1381 Q. What happened to the criminal charges that had been pending against him?

A. They were dropped. They were nolle pressed.

Q. Following the time of the filing away or the nolle pressing of those criminal charges, was he then taken out of this hospital for the insane?

A. No, he was not. His father had him re-committed to Bolivar, Tennessee.

Q. How was that accomplished. Did he go to any court?

A. Yes.

Q. What court?

A. Judge Hart's court, I think.

Q. Wasn't it Judge Hickman's court?

A. Judge Hickman's court is correct, yes, Judge Hickman, the County Court.

Q. Did a jury inquire into his sanity in Judge Hickman's court?

A. Yes, had a jury trial.

Q. What was the verdict of the County Court, or Judge Hickman's court?

A. That he was insane and too dangerous to be at large.

Q. Where was he placed then?

A. He was taken to Bolivar.

1382 Q. What is Bolivar and what is there?

A. Bolivar is the Western State Hospital, at Bolivar.

Q. How long did he stay there?

A. He was there three months.

Q. Who took him out of there?

A. His father, at my insistence.

Q. Was he released to his father, his legal guardian?

A. Yes.

Q. Was there any objection made by the authorities at Bolivar as to his being removed or released from there?

A. Yes. Dr. Cocke strenuously opposed it.

Q. What happened to him after he was taken out of the Bolivar Hospital?

A. We brought him home then.

Testimony of Mrs. Jessie Robinson

Q. Did he get employment?

A. No, he didn't.

Q. What did he do? What did his life consist of?

A. Well, we brought him home, and Frances and Jimmie came to live with us, that's Tom's son. Tom had never been around Jimmie because he was born while Tom was in the Central State Hospital. Jimmie was more than a year old at that time. And they came to live with us, and Mr. Robinson took him with him on trips to keep him out in the sunshine and see if he could not help
 1383 him make a better recovery. He felt responsible for him and he wanted to help him recover.

Q. Did he recover?

A. Not to any great extent.

Q. What did he do after those trips that failed to make a recovery for him?

A. He became restless and nervous, and easily excited, and he stayed around home, and he made just half-hearted efforts to get positions, and he didn't want Frances out of his sight, they stayed together a great deal.

Q. Did he keep any position for any length of time?

A. No, he did not. I think at that time Tom did get a position with the Servel Electrolux Company at Evansville, Indiana, and he worked just one day.

Mr. Brown: I am going to object to that, Your Honor please, unless she was at Servel.

The Court: Unless you know, Mrs. Robinson.

The Witness: Well, I do know.

The Court: Someone told you?

The Witness: No, I know.

The Court: Were you there?

The Witness: No, I wasn't in Indiana.

The Court: Then you don't know how long he worked there.

The Witness: He came back after a day's job—after a day's work. He stayed there a day.

1384 Q. I believe he came to Louisville and worked for some weeks?

A. Yes.

Q. Do you know what year that was?

Testimony of Mrs. Jessie Robinson

A. 1931, I think.

Q. After he had worked in Louisville, did he return to Nashville?

A. Yes.

Q. Did he work or try to gain employment there, after he returned from Louisville?

A. Yes, he tried to get employment and did get employment just a short time with different people.

Q. Did he ever have any connection with the Andrew Jackson Business College?

A. Yes, he worked for them for several months as a solicitor for law courses.

Q. Did he ever have any ideas of reference, if you know what I mean?

A. Yes, he did.

The Court: Ideas of what?

Mr. Hogan: Reference.

Mr. Brown: That's a purely psychiatric term.

The Court: What do you mean by "reference"?

Mr. Hogan: Saw people standing off in groups and imagine they were talking about him.

1385 Mr. Brown: I don't know how she would know what he imagined.

The Court: Not unless he expressed himself.

Q. Did he express himself?

A. Yes, he did.

Q. What did he say?

A. He would see groups of people, his former friends, and he would say they were talking about him, he knew they were talking about him.

Q. What effect did that have upon him?

A. Just depressed him, of course, and Tom brooded over the situation a lot, too.

Q. When he came back to Louisville, did he go to any other city or cities in seeking employment?

A. Yes. He went to Chicago.

Q. Do you know whether or not he worked there or not?

A. Yes, he did work there.

Q. Do you know how long he was in Chicago?

Testimony of Mrs. Jessie Robinson

A. I think he went to South Bend, Indiana, first, and got employment with the Mar-Main Arms Hotel, and he worked there three months.

Q. Then did he come back?

A. Then he came back to Chicago and stayed there for several months.

1386 Q. Did he ever return to Nashville from South Bend or Chicago?

A. Yes. They came home from Chicago.

Q. How long did they stay in Nashville on that return trip?

A. Not very long.

Q. Where did he go then?

A. While he was at home he got employment then with the—it is so hard for me to remember all of these things. I can't tell a very connected story about it.

The Court: What is the last question?

Mr. Hogan: I thought she was trying to get her thoughts collected. What is the last question?

(Question read by the reporter, as follows:)

“Where did he go then?”

A. Yes. He came home—they came home, and after several months he got a position with the DuPont Company.

Q. Where is the Du Pont Company?

A. It is several miles out of Nashville.

Q. Is that the old powder plant?

A. Yes.

Q. And after that position, did he leave Nashville again?

A. Yes.

Q. Where did he go then?

1387 A. He went back to Chicago.

Q. Was that in 1934?

A. 1934.

Q. How long did he stay in Chicago on that occasion? If you know.

A. He came back home, I don't remember just what the date is, but he came back home, the first week in Sep-

Testimony of Mrs. Jessie Robinson

tember in 1934, unexpectedly. He had lost his position in Chicago at that time.

Q. Did that have any effect upon him?

A. Yes.

Q. How did it affect him?

A. Tom was just all to pieces. He came home—his father tried to help him get a position and suggested different places for him to go to get employment and told him to go to the welding school, go to Cleveland, Ohio, and try to get employment there.

Q. Did he ever go to Cleveland, so far as you know?

A. We thought he had gone, yes.

The Court: Just a minute—Mr. Thornberry, is that air too much on your head?

Juror Thornberry: No, sir.

The Court: I saw you sneeze there a little bit.

Juror Thornberry: No, sir, I am all right.

The Court: I don't want any one of you jurors to get sick: If you feel too hot or too cold, or any drafts blowing on you that you don't like, let us know and we will all cooperate to remedy it.

Juror Thornberry: I am plenty warm, thank you.

Q. Now, Mrs. Robinson, I am going to ask you a few questions that are not very pleasant for me to ask, and I know not very pleasant for you to answer, but what kind of a behaved person was Tom's father?

A. Well, Mr. Robinson was a heavy drinker all of his life.

Q. Was he a heavy drinker before Tom's birth?

A. Yes.

Q. Was he drinking very heavily at the time of Tom's conception?

A. Yes.

Q. Suppose you tell the jury more about Tom's father's drinking habits and his conduct.

A. Mr. Robinson drank to such an extent that he would stay away from home for weeks at a time, and lots of times Tom would have to go and bring him home from the different places where he would be, either bath houses or hotels, and the last few years of his life he was just a

Testimony of Mrs. Jessie Robinson

wreck.

Q. Was he drinking to any extent at the time of Tom's conception?

A. Yes, not only drinking, but other things
1389 that go along with it.

Q. You mean carousing around?

A. Yes.

Q. Did he have any bad associates during those drinking spells?

A. Yes.

Q. What do you mean by that?

A. Well, lewd women.

Q. Now, after Tom, your son, was of some age and his father was engaging in these drinking and boisterous feats and carousing adventures, what effect did that have upon Tom, your son?

A. Tom felt awfully bad about it, it depressed him. He brooded over that a lot, too.

Q. Did that affect him noticeably?

A. Yes.

Q. Was that along about the time or after this forced marriage?

A. Yes.

Q. Now I am going to ask you this question because I know Mr. Brown is going to ask you. Did you meet your son in St. Louis after the time that it is claimed that he kidnapped Mrs. Alce Stoll?

A. I met him there after that; yes.

Q. You tell this jury in your own words what
1390 happened.

A. I went to St. Louis by arrangement, to meet my boy. I didn't know whether he would be there in St. Louis or whether I would be taken to see him. This woman who had been his companion approximately eighteen months, met me in St. Louis, at least I was told to meet her at a hotel there, and I had never seen her but once before and I didn't know whether I would even recognize her or not, and I met her at the Jefferson Hotel in St. Louis, and we spent the whole day there in a room, and late in the evening she took me to see Tom. They were

Testimony of Mrs. Jessie Robinson

living in an apartment, I don't know just in what section of the city, and I met Tom, the first time I had seen him in more than a year.

Q. Now, were you given any money on that occasion?

A. Yes, I was.

Q. How much?

A. Four Thousand dollars.

Q. Who gave it to you?

A. Tom gave it to me.

Q. Had the Department of Justice agents been on the look-out for your boy?

A. Yes. They had not only been on the look-out for him, but they had been in my home. They were ensconced in my home for ten days or two weeks, lived there.

Q. Were they trying to find him at the time that
1391 that you met him in St. Louis?

A. Yes.

Q. Did you have any fear that you may never see your boy again?

A. I certainly did. I went especially to St. Louis to beg my boy to give himself up. I felt that the time was short. I feared that he would be apprehended and probably killed, and I begged him to give himself up. That's what I went for mostly.

Q. You were his mother?

A. Yes.

Q. And you would have gone through fire to see him.
Mr. Brown: I object to that.

The Court: That's a leading question.

Q. What was his attitude then? Did he listen to you?

A. No, he didn't listen to me. He didn't pay any attention to that.

Q. What was his ideas or condition mentally as it manifested itself to you on that occasion?

A. Tom was drinking quite a bit at that time. This woman kept him drunk—not drunk, but quite a bit of liquor he drank while I was there.

Q. Well, was he the same type of boy that you had raised?

1392 A. No, a different Tom altogether.

Testimony of Mrs. Jessie Robinson

Q. Did you exert any influence over him on that occasion?

A. No.

Mr. Hogan: You may take her.

Cross-examination by Mr. Brown.

Q. Now Mrs. Robinson, during your son's prep school days, didn't you make him a present of a very expensive car?

A. No, not during his prep school days. I gave him the car when he was released from the tuberculosis hospital, in order that he might stay out in the sunshine, in the open air, so that he could recover, so he could enter school during the fall.

Q. That was during the period of 1923 to 1926, was it not, while he was attending Wallace Preparatory School?

A. No, he hadn't attended Wallace then. He got the car before he went to Wallace.

Q. After he was released from the tuberculosis sanitarium?

A. Yes. I gave it to him on his sixteenth birthday.

Q. It was a fifteen hundred dollar car, wasn't it?

A. Oh, no.

1393 Q. What kind of car was it?

A. It was a Buick coupe, about eight hundred dollars I think is all.

Q. At that time, it was on his sixteenth birthday?

A. Yes.

Q. On his sixteenth birthday.

A. Sixteenth birthday.

Q. Now Mrs. Robinson, you testified with reference to the St. Louis expedition that you made, and you said he was drinking rather heavily at that time?

A. Yes.

Q. And you felt quite worried about your son?

A. I was.

Q. Due to his association with this Jean Breese?

A. Yes.

Q. You felt that he had deteriorated physically and mentally?

Testimony of Mrs. Jessie Robinson

A. Yes, quite a lot.

Q. He was a menace to society?

A. I can't say that. I am no judge.

Q. You are no judge of that?

A. No, I am not judge of that; no, sir.

Q. But did you report to any law enforcement officer, either state or federal, his whereabouts, Mrs. Robinson?

A. I didn't even know where he would be, Mr. Brown.

Q. Did you report to them where he had been
1394 immediately after?

A. I didn't know where he had been, only just what they had told me.

The Court: He means after you left.

The Witness: No, I never at any time knew where my son would be or where he was.

Q. No. Immediately after you left the apartment in St. Louis, did you report to any federal, state or county authorities, the fact you had been in St. Louis the day before?

A. No, I didn't. I didn't think it was necessary.

Mr. Brown: That's all, Mrs. Robinson.

Mr. Hogan: That's all, Mrs. Robinson.

The Court: Before we call the next witness, we will take a short recess, Mr. Hogan.

Members of the jury, move about and make yourselves comfortable. Do not discuss the matter, however, among yourselves or with anyone, or permit anyone to talk about it in your presence.

The Marshal will give us a short recess.

A short recess was taken, after which the hearing was resumed as follows:

RICHARD M. ATKINSON, called as a witness
1395 in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Richard M. Atkinson.

Testimony of Richard M. Atkinson

Q. Where do you live, Mr. Atkinson?

A. Nashville, Tennessee.

Q. What is your business or profession?

A. Attorney at law.

Q. How long have you been such?

A. Since 1921—I have been practicing since 1921.

Q. From what school or schools are you a graduate?

A. I am from Vanderbilt University and Cumberland University.

Q. Cumberland Law School, I take it?

A. Cumberland Law School.

Q. Were you at any time Congressman from the State of Tennessee?

A. I was.

Q. What year was that?

A. That was in the year 1937 and 1938.

Q. That National Congressman?

A. Yes, sir.

Q. Washington?

A. Yes, sir.

1396 Q. Democrat, I take it.

A. Yes.

Q. Don't have any Republicans in Tennessee, do you?

A. We don't have them.

Q. What other office did you have in the State of Tennessee, if any?

A. I was District Attorney General for the Tenth Judicial District of Tennessee from 1926 to 1934.

Q. Does that embrace Nashville and Davidson County?

A. It embraces only Davidson County, due to the population.

Q. Do you know this defendant, Tom Robinson, Jr.?

A. I do.

Q. How long have you known him?

A. Since childhood.

Q. Was he a well liked boy in his community during his early manhood?

A. He was.

Q. Did he engage in social activities among the better class of people in Nashville.

Testimony of Richard M. Atkinson

A. Yes, sir.

Q. What kind of behaved boy was he, generally?

A. Well behaved.

Q. Was he well liked?

A. Yes, well liked.

1397 Q. Did you, in the capacity of your office as Attorney General for that District, have occasion to ever indict this defendant?

A. Yes, sir.

Q. When was that?

A. It was in the latter part of the twenties, I think 1929.

Q. Those charges were some charges of robbery and impersonating an officer, I believe.

A. Yes, sir; two cases of robbery.

Q. One of impersonating an officer?

A. Yes, sir.

Q. Was he tried on those charges?

A. How is that?

Q. Was he tried before a jury on those charges?

A. He was tried on a plea of present insanity.

Q. Was an inquisition into his sanity made?

A. Yes. He was sent out to Central State Hospital.

Q. For what purpose?

A. I said tried on the plea of present insanity. I want to correct that. He was sent for observation and was never tried.

Q. On the criminal charges?

A. Yes.

Q. After his observation of some two weeks, I 1398 believe, was a jury impaneled in the Davidson Circuit Court, Criminal Division, to inquire into his sanity?

A. No, sir.

Q. To refresh your recollection, wasn't a jury impaneled and didn't they pass upon his sanity in that court?

A. That may be true. I have just forgotten whether we left him out there—that is correct, yes. It was impaneled, I believe.

Q. Following that, he was committed to Central State

Testimony of Richard M. Atkinson

Hospital.

A. That's right.

Q. Now, were those criminal charges ever nolle prossed or filed away, as we sometimes term it?

A. They were nolle prossed in the following year, sometime in the spring, I think.

Q. Now, I will ask you if this insanity adjudication and commitment was done as any manner of disguise or device to assist this boy in any way to escape the charges pending against him.

A. No, sir.

Q. I believe that following his release from Bolivar and from Central State Hospital, some women from Nashville territory preferred some charges against him.

A. Yes, sir.

Q. Was he ever convicted on any of those charges?

1399 A. No, sir. He was indicted on one of them.

Q. Was he ever convicted?

A. No, sir.

Q. Has he ever been convicted of a felony, to your knowledge?

A. No, sir.

Q. Or of a misdemeanor, either?

A. I am not sure about that.

Q. You don't know, do you?

A. No, sir.

Q. Did he ever at any time make any brag or statement to you, "Bring those women in court and I'll smear them all over Nashville."

A. No, sir.

Q. That didn't happen, did it?

A. No, sir.

Mr. Hogan: Your witness, Mr. Brown.

Cross-examination by Mr. Brown.

Q. Mr. Atkinson, directing your attention to a threat to ruin those girls' reputation, did you have any conversation early in 1934 with Mr. Thomas H. Robinson, Jr., in the presence of this father, Thomas H. Robinson, Sr., and

Testimony of Richard M. Atkinson

I will ask you if Thomas H. Robinson, Sr. or Jr. did
1400 not say this, in substance, that he, Thomas H. Robinson, Jr., was not in the least fearful of any of the three girls prosecuting him since he would testify that they had gone voluntarily into his automobile and had gone to the country with him for the purpose of having improper sexual relationship and he would ruin their reputation.

A. Yes, sir.

Q. He did say that?

A. Yes, sir.

Q. Now, when young Robinson was indicted, I will ask you if his father and J. J. Lackey, his attorney, did not call upon you and it was mutually agreed between you that young Robinson should be sent to the Central State Hospital for observation?

A. Yes, sir, that was done. That was the only way we could do it under our law.

Q. You, of course, and I do not mean to imply that you were a party to any trick to keep this boy out of the penitentiary—you were not a party to any such scheme?

A. I was not, sir.

Q. Of course not. Now you have known Robinson for a long time, have you not?

A. That's true.

Q. You had occasion to observe his demeanor and you had been at that time District Attorney General
1401 for a period of approximately three years?

A. Since September 1st, 1926.

Q. Now I will ask you, Mr. Atkinson, if at all times in your opinion and from your long knowledge of Robinson, and from your observation of him, that at all times in your opinion Robinson, Jr. knew right from wrong.

Mr. Hogan: That's objected to. He is not a mental expert.

The Court: He is not passing on any conclusion. I think he can tell his own opinion as to whether he knew right from wrong. That's a matter that I think most laymen have some opinion about, if they have had the opportunity to be associated with a person.

Testimony of Richard M. Atkinson

Mr. Hogan: I think that's a matter that addresses itself to a particular science, medical testimony, known as expert testimony.

Mr. Brown: The witness is competent on that.

The Court: I believe that this witness if he qualifies himself as having been associated with Robinson and known him over a period of time and observed him, feels that he did know him well enough and long enough to be advised of that fact, he can so testify. Do you think that you did know him long enough, and well enough, and closely enough, and observed him closely enough to be qualified to make such an answer?

1402 The Witness: Yes, I think so.

Q. I will ask you further, Mr. Atkinson—

The Court: Did he answer that?

Q. Yes, did you answer that last question?

A. I don't know whether I answered or not, but I do think that he knew the difference between right and wrong.

Mr. Hogan: Exception.

Q. I will ask you further, Mr. Atkinson, if in your opinion Robinson, Jr. did not fully understand the nature and consequence of any criminal act that he might commit.

A. Yes.

Mr. Hogan: That same objection, if Your Honor please. We are getting into non-expert testimony.

The Court: The jury will understand that this is non-expert testimony. It is not medical testimony and not given to you as medical testimony, but it is given to you as the opinion of a person who had contact with this man, who had a chance to observe him over a long period of time, and a layman's opinion as to such facts, not medical facts, medical opinion, it is a layman's opinion as to such facts I think are competent for the jury to hear, but keep in mind that it is a layman's opinion, not any medical expert's opinion.

Mr. Hogan: Exception. Without interposing
1403 an exception each time and having it overruled, I would like the record to show an exception to this line of questioning.

Testimony of Richard M. Atkinson

The Court: And, of course, the jury will understand that any one witness' opinion is not conclusive in the matter. You will consider all the evidence in the case bearing on such an issue.

Redirect Examination by Mr. Hogan.

Q. Could he keep from doing right or wrong?

A. What is the question?

Q. Could he control his actions and keep from doing right or wrong?

A. Yes, I think he could if he wanted to.

Q. He didn't do it, though did he?

A. What is that?

Q. He didn't do it, did he?

A. No, he repeated the offenses.

Q. How is that?

A. I say, he repeated the offenses.

Q. Wouldn't that indicate to you that there was some lack of control, Mr. Atkinson?

Mr. Brown: I suggest that Mr. Atkinson is his own witness. He is trying to impeach him.

A. I would say this, my opinion is this, that
 1404 any man that continues to violate the law, I think there is something wrong with him, but I still think he knows the difference between right and wrong.

Q. There is something wrong with a man who continues to get in trouble, isn't there?

A. Yes, I would say there is something wrong with him.

Q. Something wrong with his mind?

A. Yes, he has got a wrong slant.

Q. Now Mr. Atkinson, did you ever see Robinson when he was in any highly nervous state?

A. Yes, sir.

Q. When was that?

A. Well, on one occasion immediately after the robbery of Mrs. Wagner and Mrs. Lamb, I had occasion to see his little sister-in-law, Mrs. Martha Warren on Church Street, I was going home from Criminal Court, and I stopped and asked her to go home, let me take her home,

Testimony of Richard M. Atkinson

and I did. We were at that time hunting for the parties who had perpetrated these robberies. And on the way out she mentioned the fact that her father had been sick and thought a great deal of me and asked if I wouldn't go in and talk to him a few minutes, and I agreed to do it. As I stepped in the door, young Mr. Robinson was standing there with Mrs. Frances Robinson, and he was
 1405 in a highly nervous state when I went in the door.

A few days later when he was apprehended and brought to my office he made the remark that "I thought my time had come when you came in the door the other day." Now he was in a very highly nervous state at that time.

Q. Did Robinson during the time that these robbery charges were pending, absent himself from Nashville?

A. I think he did.

Q. Do you know? Isn't it true that he stayed there and took some of these things and borrowed some money from the bank?

A. You mean during the course of robberies he perpetrated?

Q. This Lamb-Wagner matter.

A. He was there in Nashville, yes, sir. I thought you meant these other offenses against these other girls.

Q. No, the Lamb and Wagner matter. Did he disguise himself or attempt to?

A. No, sir, not that I know of.

Q. Went around the town there in his usual customary manner, did he not?

A. Of course, I couldn't tell you that. I didn't observe him all the time. I saw him on this occasion I referred to. That was between the time of his arrest and the commission of the offense.

Q. So far as you know, he never concealed
 1406 himself from society during the time they were trying to solve these robberies?

A. That's correct, sir.

Recross-examination by Mr. Brown.

Q. At the time of your visit to this home where Robinson was, on seeing you and you seeing him he was highly

Testimony of Richard M. Atkinson

nervous—you were the prosecuting attorney at that time.

A. Yes, sir, I was.

Q. What size city is Nashville?

A. Nashville is about 170,000 people.

Q. From your experience, after a person has committed a crime in Nashville, have many or few of the persons that have committed them been arrested there?

A. The vast majority of them are arrested right there.

Q. Arrested right there in Nashville?

A. Yes, sir.

Redirect Examination by Mr. Hogan.

Q. This boy was well known around Nashville?

A. Yes, sir.

Q. Enjoyed a wide acquaintance?

1407 A. Yes, sir.

Q. Had a host of friends, did he not?

A. Yes.

Mr. Hogan: That's all.

Mr. Brown: That's all.

DR. H. B. BRACKIN, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. You are Dr. H. B. Brackin?

A. Yes, sir.

Q. What is your business or profession?

A. I am Superintendent of the Davidson County Hospital, Nashville, Tennessee.

Q. From what school or schools are you a graduate?

A. University of Tennessee, 1921.

Q. Any other school?

A. No, sir.

Q. What kind of training did you receive in the University of Tennessee?

A. Just the general medical course, all the different

Testimony of Dr. H. B. Brackin

subjects that you study in medicine.

Q. Are you a graduate of the medical course of
1408 the University of Tennessee?

A. Graduate of what?

Q. Of the medical school or college of the University of Tennessee?

A. Yes, sir.

Q. When did you graduate?

A. 1921.

Q. Have you practiced your profession since that time?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. Have you had any special training in psychiatry?

A. Yes, sir. Practically all of my life I have done psychiatry.

Q. Will you tell this jury what training or education and experience you have had in that field?

A. I graduated in 1921 and went to the General Hospital in Nashville for general internship. After that I went to New York in psychiatry, stayed there about fourteen months, then I went to North Carolina as assistant physician, State Hospital for the Insane, where I stayed five years. Then I went to Central State Hospital in Nashville as Assistant Superintendent, stayed there six years.

Then went into private practice for two years, and
1409 since then I have been Superintendent of the Davidson County Hospital.

Q. As Superintendent of the Davidson County Hospital, do you have any mental inmates there?

A. Yes, sir, about five hundred.

Q. By that I mean, do you have inmates that have mental diseases or mental trouble?

A. That's correct.

Q. During your experience as a psychiatrist and medical expert, have you had occasion to, and have you diagnosed and treated many cases of insanity and mental cases?

A. Yes, sir.

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Q. About how many would you say you have observed, diagnosed and treated over that period of time?

A. That would be very difficult to say. During the time I was in New York we had approximately seven thousand insane patients in that hospital. Of course, I couldn't observe all of them, but there was approximately seven hundred that I saw most every day. And while I was in Carolina we had approximately two thousand patients in the hospital. In the Central State we had approximately two thousand, and where we are now we have about five hundred insane. Of course, they are changing constantly.

Q. Dr. Brackin, I'll get you, for the purpose
1410 of the record, I will impose on you a little bit and get you to read to the jury that affidavit. That's an affidavit of a doctor. It is self-explanatory and it has been agreed—

Mr. Brown: Is that Dr. Gayden's.

Mr. Hogan: Yes.

Q. (Mr. Hogan Continuing) —that his affidavit might be read and used as his evidence in this case.

Mr. Brown: I have no objection to that, Your Honor.

A. (Reading "Comes Dr. Horace C. Gayden who makes the following statement, to-wit:

That he is a practicing physician in Nashville, Tennessee, and has been so engaged since 1920. He states that he is a graduate of Vanderbilt University in Nashville, Tennessee, and is authorized to practice medicine in the State of Tennessee and that he has an office at Seventh and Church Street in Nashville, Tennessee.

He states that he has received recently a subpoena to appear at 9:00 o'clock AM on December 3, 1943, to testify as a witness in behalf of defendant, Thomas H. Robinson, Jr. in the above styled case. He states that for several years he and his brother, Dr. L. R.

Gayden, had an office and practiced medicine
1411 in Nashville, Tennessee, and that he and his brother treated Thomas H. Robinson, Jr. for syphilis for

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probably several months; not under six months and not over twelve months—several years ago, to wit, May 28, 1932 to October 4, 1932, although all his records of the treatment of said Robinson cannot now be found as his office has been moved and his old records destroyed or mislaid, and consequently he has no precise dates. He further states that his brother, Dr. L. R. Gayden, is now in the United States Army stationed at Maxwell Field, Alabama, where he has been for about 15 months. He was given the routine treatment for several months for syphilis which was alternating courses of neo salvasan intravenously in the arm and bismuth intramuscularly. He states that he never did examine the spinal fluid of this patient. He states that this is all he knows about this man's condition.

He further states that when his brother, L. R. Gayden, went into the United States Army in August, 1943, their entire office practice which was then large fell upon him and that ever since that time he has simply been submerged with work necessary to be done for the protection of his patients, and that he is a surgeon and has done much surgical work, including surgical operations on various patients; that he now has patients on whom he has operated."

1412

Mr. Brown: I don't think the rest of it has anything to do with this case.

Mr. Hogan: No, he don't have to read that. We would like to file that as the testimony of Dr. Gayden, and we might identify that.

The Court: I understand. The jury will accept that as what Dr. Gayden would testify to if he were here.

(The affidavit referred to was handed to the reporter and filed with the record as Defendant's Exhibit No. 17.)

1413 Q. Now, were you—did you have any connection with the Central State Hospital during the month of June 1929 and subsequent to that time?

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A. Yes, sir. I was Assistant Superintendent out there from January 1928 until October 1933.

Q. Was this defendant, Thomas H. Robinson, in that institution for the purpose of observation or otherwise?

A. Yes, sir, he was there for observation and he was there after that.

Q. Now when was he there for observation, if you recall?

A. I couldn't state the exact date, but I believe it was in June 1929.

Q. I show you what purports to be a report which you made to the Judge of the Criminal Division of the Davidson Circuit Court, dated June 21, 1929, along with three other medical men, and ask you if you participated in the making of that report after an observation and diagnosis of Thomas H. Robinson, Jr.'s condition previous to the making of that report?

A. Yes, sir; I did.

Q. Who were those other doctors?

A. Dr. W. S. Farmer, who was the Superintendent and who is now dead; Dr. L. S. Love, and Dr. Charles

1414 H. Johnson.

Q. Where is Dr. Johnson?

A. I don't know.

Q. Where is Dr. Love?

A. Dr. Love lives in Nashville.

Mr. Brown: Dr. Johnson is in Paris, Tennessee. I will stipulate with you on that.

Q. Was that a part of the business of that institution at that time to make that type of report when called upon by the courts?

A. Yes, sir, for a number of years, and practically all the time I was there, if a case came into the criminal court at Nashville that they had reason to suspect had a mental disease, they sent them out to the Central State Hospital for observation.

Q. And was that report made in the usual course of your business as Assistant Superintendent of the Central State Hospital?

A. That is correct.

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Q. And was it submitted to the Criminal Court of Davidson County in the usual course of your business as Assistant Superintendent of that Hospital?

A. Yes, sir.

Q. Did you supervise—did you have supervision and control of the records of that hospital at that time?

1415 A. Yes, I did. I had examinations of all the male patients—all the white male patients.

Q. I will ask you to read that report to the jury?

Mr. Brown: I am going to object to that. He is here to testify.

The Court: I believe we discussed that heretofore. I think any report that was made in the usual course of business, based upon their examinations, or the result of their examinations can be read to the jury. As to what that report gives as to what other people told them I think is purely hearsay. The fact that it is incorporated into a report doesn't make it any more competent than if the man himself was here trying to give it in person. So much of the report as is not hearsay, I think, can be given to the jury, but what is clearly hearsay, where they merely tell what somebody else told them I think falls within the rule of hearsay testimony.

Mr. Hogan: Now for the record I want to offer that, if Your Honor please, (1) as an authenticated copy of—as a part of a judicial proceeding, authenticated in the manner prescribed by the statutes. And then I would like to offer it, if you won't accept it as that, then I would like to offer it as—

The Court (Interrupting): I will accept the
1416 part that is not hearsay.

Mr. Hogan: I mean if you will not accept the hearsay—

The Court: I won't accept the hearsay part, no.

Mr. Hogan: Then I would like to offer it as a record made in the usual course of business.

The Court: That can be admitted except to the point that is hearsay.

Mr. Hogan: Then I would like to offer it as a record of a public institution as contradistinguished from a judi-

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cial record or proceeding. In other words, I would like to offer it as an entry made in the usual course of business. I think that is Section 695 of the United States Code Annotated.

The Court: I think any such records that deal with facts that occur at the time of examination, physical, mental or periodical examination, what the patients did, what is recorded about those, are admissible and can be given to the jury coming under those rules.

Insofar as the report tends to relate to things that happened in the past, that the man making the report knows nothing about except what he has obtained from hearsay, does not come within the rule. Accordingly, that part of the report will have to be left out.

1417 Mr. Hogan: Then we will offer it as a record in toto as defendant's exhibit—

The Court (Interrupting): My point is this, that since the doctors themselves, if they should come here and try to testify to those facts to the jury, an objection would be sustained on the ground it was hearsay. Now the fact that they have put that down in writing and it has been authenticated as a document, does not make it any more competent. It is still hearsay, regardless of whether they attempt to put it in themselves or whether you attempt to get it in by some other document.

Mr. Hogan: Well if Your Honor please, then we will offer it as a tendered exhibit and reserve an exception to that part of the exhibit which is not accepted.

The Court: Well now probably I had better define that a little more, and that is as to matters which occurred prior to the time when the doctor was present. Of course he may have some things that he heard while he was taking the examination which might be competent. But that past history that somebody told him about, his father or family or some other person, is not admissible.

Q. Now, doctor, without detailing or attempting to, what this boy's father or mother or anybody else for that matter told you except the boy himself, at that
1418 time, with reference to his symptoms or conditions, will you read from that report?

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The Court: I think counsel had better look at that report.

Mr. Hogan (To Mr. Brown): Have you got a copy of it?

Mr. Brown: Yes, I have it here.

(After Mr. Hogan and Mr. Brown look at the report:)

Mr. Brown: Let me ask the witness a few questions. Dr. Brackin, the material contained in this report of June 21, 1929, where did you get the facts that are contained in this document?

Witness: The most of the material was probably obtained from the patient from talking with him and from observation and examination of him.

Mr. Brown: Can't you find that from your records when you found out—let me have the copy of the report.

Witness: There is not a great deal in that record that was not obtained from a discussion and examination of the patient.

Mr. Brown: When was the examination?

Witness: June 10th. Now this information, practically everything was obtained from him. When it wasn't

I think I said the hospital blanks says so and so. 1419 That was my custom. I haven't read this for so long that I don't know exactly what is in it.

Mr. Brown: What I am trying to bring out was the information that you got from Robinson, placed in there and also the information you got from his father and mother in there?

Witness: Very little from them. This was gained from the patient.

Mr. Brown: Where is the information you got from his father and mother?

A.: It was in this report I got from him.

Mr. Brown: Then you mean this report is made from information obtained from him and from his father and mother?

Witness: Yes, and from an examination of him.

Mr. Brown: Are you able to separate it or is it so mixed up that you can't tell?

Witness: I think I can tell part of it.

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Mr. Brown: All right, I will rely on the doctor himself.

The Court: Of course, any information which you obtained by your own personal observation of him is proper.

Witness: Now there is in this report certain statements which we made of his mental disease which
1420 would not be obtained from him or his family.

Q. That's your opinion?

A. That's my opinion.

Mr. Brown: Such statements as "flower of community," and "rock of puberty"?

Witness: That's right.

Q. Those are your expressions?

A. Yes, sir.

Mr. Brown: Yours or Dr. Farmer's?

Witness: Well—both. That is not just an expression of Dr. Farmer's but it is an accepted expression of psychiatrists.

Mr. Brown: I will leave it up to you to not read the parts that should be left out.

Witness: All right.

A. (Reading): "On June 10th, 1929, Thomas H. Robinson Jr. was committed by your Honorable Court to this institution for a period of observation as to his mental condition, and after our observation was completed to be returned to the custody of the jailer or sheriff of Davidson County.

"We, the Physicians of the Central State Hospital, beg leave to make the following report, namely:

"We believe this to be a case of Schizophrenia often referred to, or spoken of, as insanity of
1421 adolescence. It is a slow insidious type of mental diseases and is frequently overlooked until the case is far advanced. The majority of these cases show symptoms between the ages of 16 and 25 or 30 years of age, and owing to the newspaper notoriety and owing to the prominence of the family, and owing to the fact that many of the lay people does not respect the opinion of Psychiatrists, we are going into this case a little more fully than we ordi-

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narily do, and explain to your Honorable Court why we think this young man is insane."

Now he told me a great many things that his family also told me. For instance, about his education. Some things that are there next he told me and also his father and his mother told me.

The Court: All right.

Mr. Brown: I will rely upon you.

A. (Continuing to read): "In going into the history of this case, we find this young man has had an opportunity to get either a collegiate or a university education. But we find while he at one time led his classes he began to fall down at Wallace Preparatory School and failed to get a diploma but received a certificate failing in geometry. We find also that he entered the Vanderbilt

law school as a special student and started off well,
1422 but he lost interest in this school and did not study."

He told me that himself, "but soon began to cut his classes and according to the history of his case was doing no good in school." * * * "He also entered the YMCA Night Law School; lost interest in this school and stopped." Now it says here "According to his history," but he gave the information, that he had married twice. "The first woman he was not in love with; that he had been having sexual intercourse with this woman and was forced to marry her; * * * he sued for a divorce which was granted."

"Patient admitted that he had been a member of the Presbyterian Church and used to be regular in attendance, but he conceived an idea that the pastor was preaching directly to him. He lost interest and quit the church.

"He also says he has seen people standing off two or three together and would imagine they were talking about him. * * *

"He appears to have various wild theories in his mind, that he would argue against the church, against preachers, against prohibition and against the fallacy of the Bible. It seems that he has had a change of personality and that he had a disposition to criticise his town, his people and his friends without reason. He got an idea that his

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1423 father and mother were against him at times, and admitted to us that he had cursed his mother, and on one occasion threatened to kill his father.

"According to history he married his last wife in January 1929. * * * He claims to have had sexual intercourse with his wife every time he would come in, morning, noon and night, and yet he was not sexually satisfied and would masturbate also. Masturbation in a case of this kind is not the cause, but is a symptom, or the result of a diseased mind.

"He thought that there were people who were mind readers and could read his mind and he would not go around them.

"The appearance and the facial expression of this young man is that of one suffering from mental trouble, and in taking this young man's life history, and in our personal findings, we are unanimous in our opinion that this young man at the present time is insane if we have made a correct diagnosis of his case and we believe we have. While a small percentage of these cases make a recovery, under proper treatment, the majority slowly deteriorate mentally and the prognosis is gloomy, as the French would have it, "they are stranded on the rock of puberty." This young man had no insight into his condition. * * * "We have no personal or financial interest in this lawsuit, and we are making the above statement purely for the
1424 information of your Honorable Court, at the same time sending a copy of this report to Attorney General Adkinson, and to the Attorney for the defense and keeping a copy in our office.

"We are asking the sheriff to come and carry him back to jail as per your order, for any disposition of his case that your Honorable Court may determine upon.

"Respectfully submitted,

W. S. Farmer, M. D.

H. B. Brackin, M. D.

L. S. Love, M. D.

Charles H. Johnson, M. D."

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Q. What is the date of that report, Doctor?

A. June 22d.

Q. What year?

A. 1929.

Q. Was that your opinion then of this man's mental condition?

A. Yes, sir.

Q. Is it your opinion today of his then mental condition?

A. Yes, sir.

Q. Do you stand solidly 100% on that report?

A. That's correct.

Q. Now, following that period of observation—
1425 you said something about taking him back to jail—
what happened to him after that?

A. Well we got him back within a few days. They had a trial, I suppose, and he was found insane and committed to the Criminal Insane Department, to be held until he recovered.

Q. Now did you see him after his re-committment there?

A. Oh, yes, I saw him practically every day—every day unless I happened to be sick or was away on vacation or something like that.

Q. Did he have any idea about you?

A. Well I was under the impression that he thought that I—

Mr. Brown (Interrupting): I am going to object to any impressions.

The Court: No. Whatever he indicated to you. You couldn't read his thoughts, I don't expect, but whatever he indicated to you, his acts, you may tell that.

A. Well he told us, if that is permissible, that we didn't treat him right.

Q. Were you treating him correctly?

A. We were treating him just the same as we treated all of our patients.

1426 (Whereupon the photostatic copy of letter dated
June 21, 1929 addressed to Hon. Chester K. Hart and

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signed by Drs. Farmer, Brackin, Love and Johnson, was marked Defendant's Exhibit No. 18 and filed.)

Q. Did he have any ideas of grandeur while he was in there?

A. Yes, sir.

Q. Now what do you mean by an idea of grandeur?

A. Well he felt that he was a very—

Mr. Brown (Interrupting): Is that reflected in your report, Doctor? I will be able to follow you if it is in this report.

Witness: It is in my mental examination—this report here.

Mr. Brown: All right. Mental Examination?

Witness: Yes.

Q. Now, Doctor, I will ask you to look at another report from the Central State Hospital, which bears the heading "Ward notes," and of the subject Thomas H. Robinson Jr. by Dr. Brackin, beginning with June 12, 1929, and appears and purports to cover Ward and family history and personal history, diagnosis, and observation and treatment notes of Thomas H. Robinson, Jr., and ask you if this record was prepared by you or at your instance and request?

A. It was prepared by me. I dictated all of it.

Q. Was it prepared by you after observation, 1427 treatment and diagnosis of this defendant's, Thomas H. Robinson Jr.'s, then condition and course?

A. Yes, part of it was prepared, of course, before the diagnosis because we had him there for something like two weeks before we diagnosed him. That was part of what we diagnosed him on, and we continued to make notes after that, and they are included.

Q. Was it prepared from a diagnosis that you made or had already made?

A. I don't understand you exactly.

Q. Was it prepared from your treatment and then present diagnosis, or a diagnosis that you had previously made and reported to the Criminal Division of the Davidson Circuit Court?

A. Well we confirmed our previous diagnosis. I saw

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him every day for eleven months; and I was more confirmed in my opinion at the end of the eleven months that I was correct at first.

Mr. Hogan: Now I will offer this in the same manner as I did the other exhibit, in a triple capacity, and tender it as Defendant's Exhibit No. 19.

The Court: They have been previously identified as Exhibits Nos. 14 and 15, haven't they?

Mr. Hogan: No, they haven't.

1428 Mr. Brown: I, of course, will not have any objection to that if Dr. Brackin will look at it and say that it is a complete record of the case at the Central State Hospital.

The Court: Your objection is that he has not looked at it?

Mr. Brown: Yes, because my certified copy seems to be so much bigger than his.

Mr. Hogan: No, that is authenticated as to what it purports to contain.

Mr. Brown: Well we certainly ought to have the whole record.

Witness: This is the record of my original examination and several examination after that, and observation. It is not the record of his medical history; it is not the laboratory record; it does not show the copies of several letters and things of that kind that were in his record.

Mr. Brown: You mean it is not the complete record at the Central State Hospital?

Witness: No, it is not.

The Court: Have you the other parts?

Mr. Brown: I believe so.

The Court: Well, I believe, if counsel wants
1429 the complete record in, if you want to introduce any part of the record at all, Mr. Hogan, opposing counsel has the right to have the whole record introduced.

Mr. Hogan: Yes, that's right. I will offer what I offer, and he can introduce what he has.

The Court: All right.

Mr. Brown: Examine mine and see what is the difference, Mr. Brackin?

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Mr. Hogan: It is thicker.

(The witness examines Mr. Brown's record.)

Witness: Yes, sir, this seems to be a complete record. As a matter of fact, there are a few letters in there that were written after I left the hospital.

Mr. Brown: All right. Thank you.

The Court: Now I believe you want to introduce what you have, and Mr. Brown wants to supplement it by what he has—

Mr. Hogan: That is right.

The Court: Now if you start out putting anything in, I am going to let Mr. Brown offer what he has.

Mr. Hogan: All right.

The Court: If you don't want it all in, don't offer any of it.

Mr. Hogan: I don't have anything to hide.

1430 (Whereupon photostatic copy of record filed by Mr. Hogan was marked Defendant's Exhibit No. 19; and the photostatic copy of record Mr. Brown had was filed in the record and made a part of Defendant's Exhibit No. 19.)

Q. Suppose you read this to the jury?

The Court: Just a minute, gentlemen. I suppose you have a right to have the record read but that looks like a very sizable document and if he starts reading on that I don't know when he is going to get through. How long is it going to take you to read that document?

Witness: About 20 minutes.

Mr. Brown: Well you will have to be a pretty fast reader.

The Court: I think you have the same failing that lawyers have, they always underestimate the time. What does the government want to do about this afternoon session? It is now five o'clock. If we get started here we may go on into the late hours tonight.

Mr. Brown: Shall we have a session tonight?

Mr. Hogan: All right.

The Court: We can go ahead here for a little longer, say close to 5:30 and come back at 7:30? How does the

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jury feel about that?

I want to tell the jury at this time, as at other times, I want you to preserve your health and your well being;

I don't want to put you to any undue strain here.

1431 At the same time I want to caution you as to your eating and not eat too much just because it is there before you. Overeating sometimes has bad effects and we don't want any of you to be ill or incapacitated, particularly from overeating. Some of you look like you have a guilty conscience.

Well, suppose we let the Doctor start reading that report for a while and then we will adjourn.

A. (Reading) "Patient was admitted June 10th, brought from the County jail by two officers, and was accompanied by his father and other relatives. He was quiet on admission and entered the ward very willingly, and was placed on the receiving ward with the usual routine.

"Family History: Patient knew nothing about his grandparents.

"Father, Thomas H. Robinson, born in Nashville, living, age 56. He is in charge of the Bridge Department for the Nashville Bridge Company. His father uses alcohol at times, but seldom gets drunk.

"Mother, Jessie Preston, born in Marietta, Ohio, living, age 52. Patient is the only child.

"Patient had a great paternal aunt who was insane and possibly was in this institution. No other history of insanity, epilepsy or criminality among his relatives.

"Personal History: Borne in Nashville May 5,

1432 1907. He was healthy as a child, had the mumps, and then about the age of 16 had malaria and had to have some bones cut out of his nose, and following this was diagnosed Tubercular, and sent to the Davidson Tubercular Hospital where he remained about ten months. While there he had influenza which was complicated with pleurisy and double pneumonia. He also had his tonsils removed when about 15 years of age. He has had two operations for the removal of ingrowing toe nails. When about 18 years of age he got some infection in his eyes; first in one and then it spread to the other. About one year and a half

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ago he had gonorrhoea. He has never had syphilis to his knowledge. Patient has had no accidental injuries that he recalls. His father says that he had some injury to his head when about the age of 12.

"Patient went to school and finished grammar school, in Wallace Preparatory School, lacking only one subject. He failed in solid geometry, so he did not get a diploma but a certificate. He led his classes in several subjects. While in preparatory school he took no special interest in athletics.

"He entered Vanderbilt Law School as a special student, lacking about one-half of a unit of having sufficient credits. If he made good grades all through, he was to receive a diploma. The first two years of law school he did well, made excellent grades. He then entered **1433** the third year in Sept. 1928. He lost all interest in school. Did not study, began to cut his classes. At this time he became infatuated with a senior in high school. She also began to cut her classes. His father saw he was doing no good in school and took him out in November. Patient does not know what caused him to lose interest in school after having done well until this time. He says he got a fair deal in school, and that his girl friend encouraged him. Says he was not worried over anything in particular.

"Patient got a job with the Wayne Lumber Co., as time-keeper, and worked for them until about the first of February. They told him at first that his work was the best of any one they had had, but later they let him out claiming they were doing away with the position, and did not offer him any other work. He says he had become disgusted with the work, as it was long hard hours and filthy, but admitted it was this kind of work which he was doing good work in. Sometime after he stopped school at Vanderbilt, he entered the Y.M.C.A. night law school. His father says he was very enthusiastic at first. Said the teachers at Vanderbilt were not practical lawyers, but that these men were every day attorneys, but, he soon lost interest and stopped. Did not go but three or four weeks. Says he could not get a job except one at \$20.00 per week where he had to make bond and be responsible for a

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1434 lot of money. He admits that he just rocked along and didn't make much effort.

"Patient married the first time about the age of 19. He had been going with this girl for about nine months. He was not in love with her, but married her because a warrant was sworn out for him for the violation of the 'age of consent law.' It had been about six months since he had first had intercourse with her, and the girl told him that it would be about three months before the baby would be born, however, it was born six days after he married her. He soon recognized that they had misrepresented it to him, and that he was not the father of the child. He sued for divorce, proved it was not his child; introduced a letter into the court that she had written to a boy who lives in Columbia telling him that he was the father of the baby about to be born. He had a very hard time getting this letter introduced. He showed in court where this girl and her family had purged their statement on eighteen different counts. He won getting his divorce, and did not have to pay her or the child anything. This decree was rendered about July 1927.

"He met his present wife in Aug. 1928 and married her in January 1929. Married life has been congenial. His wife is pregnant. Patient has lived with his father prac-

1435 tically all of his life, but boarded for three or four weeks after he married, but on losing his job went back to his father's, and on April 26th moved away from his father's to Hillsboro Manor Apt. House where he had to pay \$52.50 per month and still had no job. He says he moved away because he could not get along. Says his mother was always getting after him, fussing at him, and irritating him. Before he moved away from his father's house on March 12th he made out two counterfeit search warrants; bought them from McQuiddy Printing Co. He knew how to make them out as he had learned in law school. He signed fictitious names. He took the street car and went to Mrs. Lamb's; went in the house, put them all in the living room and told them he had come to search for whiskey. He got all the jewelry including diamonds, watches, pins and rings which amounted to about \$3500.00

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leaving the whiskey, although, there was a quart or more there. Went out and got in Mrs. Lamb's car and drove it to Mrs. Waggoner's. Presented the search warrant and told them he had come to search for whiskey. Put Mrs. Waggoner and a negro man in a room and obtained \$3200.00 worth of diamonds. Drove this car out on Jackson Boulevard and left it about a quarter of a mile from his father's home and walked home. He says that one day he heard his wife remark about how many diamonds Mrs.

Lamb had on her fingers. He then made a mental
1436 note of the number of the car she was in. He did not know Mrs. Lamb. This is the reason he went to Mrs. Lamb's house. Mrs. Caldwell, who lived in the same Apartment Building, the patient did, had often spoke of the number of diamonds that Mrs. Waggoner owned. He had seen Mrs. Waggoner, and knew where she lived, but had not met her. This was the reason he chose Mrs. Waggoner's house. Mrs. Caldwell was the lady who later introduced Mrs. Waggoner to the patient, at Mrs. Waggoner's request; that later caused Mrs. Waggoner to be able to identify the patient.

"The patient borrowed from the Broadway National Bank \$500 on three of these diamonds. He paid some debts with some of this money, and moved into the Apartment House. He had had the diamonds while at his father's hid between the layers of floor in a closet. He had done this by taking a piece out of the floor and then putting it back. When he moved to the apartment house he hid them in his locker in the basement. He pawned one ring for about \$20.00 about two weeks before he was captured. He had left twenty-one small diamonds at Small's for two months to sell for him, but Small could not sell them, but recommended Jacob's, who gave him \$50.00 for them. The rest of the diamonds and jewelry he still had when he was captured.

"Patient is a member of the Presbyterian Church. He used to be regular in attendance, but had lost interest and had quit going, and says now if he should
1437 die suddenly, he would go to hell.

"Patient admits the masturbation habit; beginning the

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habit when the patient was at the Tubercular Hospital. He has continued every since. He has masturbated as often as every night, but average about every three nights. He still masturbates, although, he is married, but not masturbate so often. He can't tell why he does so now. Says he gets mad at himself for doing it. Says he can't explain that any more than he can why he took the jewelry.

"Past Mental Trouble: No history of any.

"Present Mental Trouble: The father says that he does not think his boy has any mental trouble now, that he may have had some mental trouble a year ago when he was worrying over the divorce trial. The most notable changes that his father has noted in his behavior and disposition in the past year have been his lack of interest in school; lack of interest in his work, losing his job; leaving his father's home without a job; exaggerated idea of how he would clean up on real estate, but did not get the options; then stealing of the jewelry and selling it, pawning it, and putting it up as collateral in the town where it was stolen, and continuing to stay in the town. His father also states that

the patient has not been susceptible to instructions
1438 or correction the last few months. The last year and one-half he has been cursing his mother when she attempted to correct or advise him. About six or eight months ago he cursed his mother and his father slapped him. The patient left the table and came back with a pistol in his hand, and was in a rage. His mother stepped between him and his father, and he stopped.

"He dropped his frat, the Pi-K-A because he said the boys were not square to him, wouldn't pay their debts, and they were dumbbells. He quit his Sunday School on account of his pastor.

"Mental Exam. Attitude and Manner: This patient has been quiet and well behaved since he entered the hospital. Eats and sleeps well. Is clean and tidy in his personal appearance. Readily obeys ward routine.

"Stream of Mental Activity: Patient answered all questions to the best of his ability. His answers were all relevant and coherent. There was no rambling or flight of ideas noted, in fact, nothing abnormal in his stream of

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conversation. He really volunteered information and appeared frank and open. Was not evasive on anything that he was questioned in regard to.

"Emotional Reaction, affect and Mood: Patient has appeared slightly retarded since admission. He became emotional a number of times during the examination which took up practically all of the morning and afternoon.

1439 He appears worried over the condition that he is in, but says that he is not worrying so much about himself, but about his wife, his mother and his daddy. He says that he does not understand why he did it, and if he had it to do over, he would do different. At the present time his emotional reaction is adequate to the ideas he expresses, but he gives a history of his feelings in the past when his emotional reaction was not adequate with the ideas that he felt and expressed.

"Mental Trend, Content of Thought: Patient gives a history of feeling different for the last year and a half from what he used to feel. He lost interest in school. He lost interest in his work, and got so he did nothing but loaf. He got an idea that he was super-man. He was full of ego. At intervals he had the above feelings, but not all of the time. At times he would feel that he could commit crimes or do anything and get by with it. He felt there was no likelihood of his being caught after taking the jewelry, putting it up as collateral, selling it, etc., here in the same town, and also the fact that he had seen Mrs. Waggoner, and she had seen him before he had robbed her. Now he sees how thin and what a little chance he had of getting by, but before he had felt secure. He got to feeling there was no use in trying to do right. He had wild theories in his mind. At times he would argue against the church,

1440 against preachers, against prohibition, about the fallacies of the Bible, even when he did not believe it himself, or, at least, he did not believe it later, but says he believed it at the time he argued it, and later would become sorry. His disposition has changed so that he took every opportunity to criticize his town and the people and his friends without reason, and then would feel sorry later. He has become irritable with his mother. Every time she

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would correct him it would make him angry and he slapped her once, and admits getting a gun to shoot his father, but could not recall the exact conditions that caused him to get it. He got an idea that his mother and father were against him; that they were not treating him right, and this is the reason that he left their home. He says his feelings as a whole toward the people and the world have changed. Not since he has been caught in this crime has the feeling of being sorry come over him, and he feels as if he had been taken down off of the pedestal where he thinks he was, but even yet, at times the peculiar thoughts run through his mind, such as, his ability to do things, and that he is not sorry. He says that he has feelings at times that he has done things before that he has not. In fact, he felt today as if he had talked to the examiner before when he knew that he had not, and when he got his glasses in jail he felt as if he had gotten them there before. Patient has

1441 no definite ideas of persecution, no delusions of any kind except these feelings of dual personality which has just been explained. No auditory or visual hallucinations have been elicited. Patient has often had dreams. The two most frequent dreams are first "falling from a high place," and second, "having intercourse." He says that he has had several times a day fantastical type of dreams.

"Sensorium, Mental Grasp and Capacity: Patient knows the name and the nature of the institution, number of states in the Union, named 5 large rivers, five countries in Europe. Knew when the Civil War was fought, and when the Spanish American War was fought, and named several legal holidays. His calculations in arithmetic were good. He knew the difference between a lie and a mistake, water and ice, and the meaning of "It takes a thief to catch a thief," and "The early bird catches the worm." He made a sentence with the words, dog, gun, hunter, rabbit and forest. He remembers 375 Oxford St. yellow after two minutes. His memory is good.

"Physical Exam: White male, age 22 years, height 5' 10½", weight 140 lbs.

"Head—Hair brown, scalp negative, ears negative, eyes

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peculiar color, kind of grayish brown and assymetry of the face, left side smaller. Mouth—Teeth good. Tongue coated. Throat negative.

1442 “Circulatory System: Heart size, rate and rythm normal. No murmurs heard.

“Respiratory System: Chest well muscled. Expansion good. Lungs, nothing abnormal heard on auscultation.

“Alimentary System: Appetite good. Bowels constipated, uses Mineral Oil. Abdomen negative to palpation.

“G. W. System: Negative.

“Extremities: Negative.

“Neurological: Pupils irregular. React to light but dilate again. Patellar reflexes normal. Romberg normal. Repeat test phrases normal.

“Summary: White male, admitted June 10, 1929, Davidson County, 22 years of age, brought from the county jail. Was ordered sent here from Honorable Chester K. Hart's Court, Division 1, Circuit Court of Davidson County for a period of observation, and when it is done to be returned to the custody of the jailer. He was accused of robbing and has admitted same.

“History of normal childhood. Got along in school for two years in law, but suddenly lost interest, began to cut classes, stopped school, married; lost his job from lack of interest, moved from his father's home without a job and without reason for leaving so far as they could see. Had become irritable with his mother, and would not take correction, and cursing her and threatening to kill

1443 his father. Married twice. First time accused of violating of the ‘age of consent law,’ but won a divorce in court.

“History of unusual feelings for the past year and a half. At times feeling that he was a super-man, could do anything. Felt that he could commit crime and get away with it. Turned against the town, the people and church and argued against things and at other times would be sorry. These feelings would come and go. Stole this jewelry on a fake search warrant, pawned it, put it up as

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collateral and stayed in town and felt he was secure. Now he is sorry and cries a lot, but at times yet has these other feelings to come over him. He got an idea that his parent were against him. He has no hallucinations. His memory is good, made a good showing on all mental tests. Physical examination showed nothing of importance.

STAFF NOTE: (June 14, 1929)

"Presented before staff for study—Drs. Farmer, Brackin, Love and Johnson present. Patients reaction was the same as described in history. He reiterated all of his previous feelings and experiences. Patient has noted people standing off talking about him. Has felt the preacher preached directly at him. Felt his parents mistreated him but he could not give one specific example. For the last year or two he has noticed he does not desire to be with many people as he used to do. His hands **1444** are cold and clammy. Will hold for further observation.

STAFF NOTE: (June 20, 1929)

"Presented for study—Drs. Farmer, Brackin, Love and Johnson, Internes Ramsey and Newton present. Patient continues to tell the same story as he had previously. He was questioned in regard to his sexual desire. He admitted having intercourse with his wife every time he would come in, morning, noon and night—and then would masturbate too. He said he saw Mrs. Waggoner on the street and talked to her and had on the same suit he had on when he robbed her, but he never felt that she could recognize him. He admits he worked for The Nashville Bridge Co. and that he told them they were not running their business right and that he made many suggestions as to how they should run it. He is still satisfied they were not running their business right but cannot tell you why. He quit church about 1 year before they moved from East Nashville, because he thought the preacher was preaching at him. He was about 18 years of age then. He has many ideas of reference. Has thought mind readers could read

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his mind and would not go around them. He admits he did not think his mother and father did not treat him right, although he admitted they had always done everything for him he asked. Being the only child he has had every wish.

Diagnosis—It was unanimously agreed that he is a case of dementia praecox or schizophrenia.

1445 Admission Note: By Dr. Brackin, June 28, 1929.

"Patient was admitted June 27th, brought from Davidson County jail where he had been sent from this hospital on June 24th after having been observed here for 14 days by order of Judge Chester K. Hart of Criminal Court, Division 1. He has been in jail the three days since he left, and has had trial and was found insane by a jury and committed here to remain until he recovers, and then to be returned to the custody of the Sheriff or Jailer of Davidson County. During his stay here he was diagnosed "Dementia Praecox" unanimously by the Staff, and a full record of his previous examination and report to the court was on file in his folder.

"He appeared quiet on this admission. Entered the ward willingly and did not appear worried.

"Mental Exam. Attitude and Manner: There has been no change in this patient's condition since he left the hospital three days ago. He does not appear to be worried. Says he feels some better than he did. Feels like he would like to work; expects to cooperate and to do just as he is told to do here. Says his father and the doctors thought it was best for him to be here, and he is willing to abide by their judgment. He has lost some confidence in himself. Feels that he has dropped off of a pinnacle. Says his attitude has changed toward his parents. Says he has not

1446 masturbated during the time he was here previously, and during the time he was in jail. Says he promised his daddy he would not do it any more, and that he would try to straighten up.

"His expression and attitude is the same as it was on previous admission. He still appears to lack interest, and to not realize the seriousness of his case.

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STAFF NOTE: (June 29, 1929)

Presented for diagnosis—Drs. Farmer, Brackin, Love and Johnson, Internes Ramsey and Newton Present.

“Nothing new brought out; says he recognizes now there has been something wrong with him. Feels he would like to go into the insurance business.

“Diagnoses: Dementia Praecox.

STAFF NOTE: (February 17, 1930)

Presented before staff for further study—Drs. Farmer, Brackin and Love present.

“There was a recapitulation of all statements made in the previous mental examination and patient remembers all of his ideas but claims he has overcome a lot of these. He admits that he feels inwardly that he is better and superior to most of the patients on the 12th ward, but says he does not outwardly express it. He claims he has not masturbated since he came here. The capsules he had on the ward, that were found in his spectacle case, he claims

1447 were aspirin; says Morris Doherty gave them to him before he left; says there were 12 and he has taken two, and has 10 left. Patient claims that every time he tries to get any medicine here he has to “sit in the chair”. He says he is friendly with all patients except three or four, who are snitchers—these snitchers are McPherson, Banks and Woodard; says he was put in the room with McPherson because McPherson is a snitcher and is not his friend. Patient states that Woodard tried to get him to have his wife bring hacksaws to them so they could escape; also wanted patient to try to burn out. He says that he purposely put out some wrong information for Woodard and it came back to him from the attendants; says he “has Woodard’s number” when he came here; says he is too smart for them. The patient claims that he has three jobs waiting for him when he gets out—one with a steel company and another with the Fidelity Trust Company of Memphis, with a salary of \$200 a month offered him at the last named

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place, to start in with. His superior attitude and ego are more marked now than when he first came to the hospital. His conduct shows the superior man idea, and he hasn't the proper insight.

WARD NOTE: (February 18, 1930)

"Since this patient was brought before the staff on yesterday he has been doing some very big talking on the wards to other patients. He says that his wife will
1448 bring him anything he asks her to and that he is going to have her to bring him a pistol and he going to turn it over to a friend—a patient on his ward, who is going to use it. He also says there are only two or three patients on his ward with whom he is willing to hold a conversation because they are the only ones who have enough sense for him to even attempt to converse with them.

STAFF NOTE: (May 16, 1930)

"Presented for study—Drs. Farmer, Brackin and Love present. Patient appears to be better but he still has an exaggerated opinion of himself; says there is a job waiting for him at \$225.00 per month, regardless of his former record. His judgment is bad. Patient doesn't think that either the attendants or physicians have treated him right—he has been treated like all other patients, but thinks that is not right for him. The staff decided that patient is now in a state of remission, but would not say he is well.

STAFF NOTE: (May 20, 1930)

"On this date Dr. Farmer, superintendent, received a telephone call from Capt. Lyle, Commissioner of Institutions, informing him that all charges against this patient had been nolle prossed and that the district attorney general had ruled that the hospital had no further jurisdiction in the case. Capt. Lyle also sent Dr. Farmer a copy
1449 of a letter from the state attorney general, L. D. Smith, whose opinion was that the commissioner of

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institutions might surrender the person of this party to his regular appointed guardian, so the patient was turned over to his father and discharged from the books of the hospital.

"As the patient was leaving he said he appreciated very much the treatment he had received here; that while he formerly thought we were hard on him, he saw now that it was for his own good."

This last page is not a part of the record.

The Court: I believe we are so close now to the adjournment hour we had better adjourn now and come back tonight.

Members of the Jury, remember not to talk about this case to each other or to anybody and don't let anybody talk about it in your presence; and also the admonition about your diet and the way you take care of yourself. We have gone a week and a half on this case and all of you look pretty hale and healthy now and I don't want anything to happen to any of you in the remaining few days we may have to go in order to complete this case. Try to look after yourselves just as you would at your home. Don't let the fact that you are down here at the Brown Hotel lead you into over-indulgence in food in any way.

We will adjourn then and come back for a short session tonight, at 7:30.

1450 Met, pursuant to adjournment, at 7:30 P.M.,

Wednesday, December 8th, 1943, and the following proceedings were had:

The Court: Is Dr. Brackin here?

Mr. Hogan: Your Honor, I wonder if we couldn't in between this recess have that demonstration of that young lady.

Mr. Brown: It is quite all right with me.

The Court: All right.

MARJORIE KIRCHHUBEL was recalled as a witness in behalf of the defendant, and having been duly sworn, was examined and testified as follows:

Testimony of Marjorie Kirchhubel

Direct Examination by Mr. Hogan (Continued).

Q. Now, for the purpose of the record, will you attempt to demonstrate and try to get through that window?

(The witness thereupon left the witness-stand and proceeded to the window, stepped on the toilet seat, unlocked and raised the window, unlocked and pushed the screen aside, and then went through the window, feet first.)

Mr. Brown: I want to ask her a few questions.

The Court: Is that all you want to ask her, Mr. Hogan?

Mr. Hogan: That's all, except let the record
1451 show that she went through the window.

Mr. Brown: With a severe bump on the back of her head.

The Witness: It wasn't very severe.

Cross-examination by Mr. Brown.

Q. Miss Kirchhubel, you say you went to Shawnee High School?

A. Yes, sir.

Q. What athletics did you participate in?

A. I just took gym in High School. I didn't go out for anything else.

Q. Hand ball?

A. No. I never was very athletic.

Q. Any intermural sports?

A. I played a little tennis, that's all.

Q. Any other intermural sports?

A. I played the regular games in High School.

Q. Basketball?

A. Yes.

Q. Volley ball?

A. In class.

Q. Now, have you ever gone through this window before?

1452 A. Yes, sir, and I went through just as well or better.

Q. Oh, you mean you have been through this window

Testimony of Marjorie Kirchhubel

before, this was not the first time you have been through, this window?

A. No, sir.

Mr. Brown: That's all.

Q. (By Mr. Hogan) Miss Kirchhubel, I will ask you if in your early life you had any physical impairment.

A. I had infantile paralysis.

Q. (By Mr. Brown) So you compensated for that by participating in sports?

A. I played in High School. I never went out any extra.

The Court: How old are you, Miss Kirchhubel?

The Witness: Twenty-two.

Q. (By Mr. Hogan) You are not particularly athletic, in other words.

A. Not at all.

Mr. Hogan: That's all. Stand down.

Mr. Brown: That's all.

Mr. Hogan: Call Dr. Brackin.

The Court: Can't we remove the exhibit from the court room?

(The exhibit was thereupon removed from the
1453 court room.)

DR. H. B. BRACKIN resumed the witness-stand and was examined and testified as follows.

Direct Examination Continued by Mr. Hogan.

Q. Dr. Brackin, what is meant by dementia praecox?

A. Dementia Praecox is a mental disorder that begins usually between the ages of fifteen and twenty-five or thirty, usually begins rather slowly, insidiously, slips up on people. It generally begins by becoming indifferent; may have been getting along quite well in school and begin to lose interest. The first appearance, the school teachers may think they are just lazy. Then they probably begin to refuse to obey discipline in school, discipline of their parents, become irritable, then usually become grad-

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ually seclusive. After that there is a change in their emotions as pertaining to their thoughts. That's usually one of the greatest points of dementia praecox. Then they may develop delusions, hallucinations, usually ideas of reference are one of the early symptoms. This may continue until their conversation is very incoherent, silly, go through mannerisms, and finally deteriorate, a large percentage of them.

1454 Q. Are there any recoveries?

A. Yes, sir.

Q. In dementia praecox?

A. Yes, sir. There is a certain percentage that recovers, whether they do anything for them or not.

Q. What do you attribute that recovery to?

A. Well, the patient is able to get hold of themselves. There is not any definite thing you can attribute it to. Of course, there are types of treatment that will cause them to recover, but I am not speaking of those types of treatment.

Q. Does nature itself play any part in the recovery of those types of patients?

A. Well, it may do that, and then, of course, the patient gets occupied, occupational therapy, which is, of course, a type of therapy, but if the patient is at work he can get his mind off these difficulties that he has had.

Q. What is a delusion? You used that term a moment ago?

A. Delusion is a false idea.

Q. Now, let's assume that we know nothing about delusions. Will you kindly enlighten us, please, sir, on what a delusion is, by giving some example, if you care to.

A. Well, there are paranoid delusions which are very common. It is an idea that people are mistreating
1455 you, have it in for you, when there is not any basis for it.

Q. That's an idea or, as you say, a delusion upon a false premise?

A. That's right. That's what is spoken of as a delusion persecution.

Q. What is usually the first manifestation of demen-

Testimony of Dr. H. B. Brackin

tia praecox?

A. Indifference, I would say. It is usually a result, we think so, of failure to get along with different situations that come up in life, and as they fail to handle these situations properly then they finally become indifferent.

Q. Now, taking Tom Robinson's case for a concrete example, do you consider that this shock from this forced marriage played any part in his deterioration or change in personality?

A. Personally, I don't know. Something was responsible, and that occurred about that time. It is possible that it did.

Q. Was that such a type of shock or change that could have or probably could have brought about his change in personality?

A. It could have, either domestic, or financial, or any type—death in a family, sometimes, any type of shock.

1456 Q. Now what is an hallucination?

A. Hallucination is believing that you hear a voice, or see a person, or feel something that is not present there. There are several types of hallucinations—hallucinations of hearing, hallucinations of sight, hallucinations of smell, touch.

Q. The hearing hallucination is commonly termed an auditory hallucination?

A. Yes, sir, that is correct.

Q. And the sight, you medical men call it a visual hallucination, do you not?

A. That's correct.

Q. Have any reference to delirium tremens?

A. They are very frequent in delirium tremens, vision hallucinations.

Q. Blue monkeys and white elephants?

A. Yes.

Q. What is a psychopathic personality?

A. A psychopathic personality is a person who is abnormal from birth or very early childhood. He is abnormal usually emotionally, morally, ethically, but not to the place to be certified as insane except in episodes.

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Q. Is there any difference between a psychopathic personality and a constitutional psychopath?

A. No. There are about a half dozen names that
1457 are used for that. That means approximately the same thing.

Q. What type of person would you classify as a psychopathic personality or a constitutional psychopath?

A. I didn't quite finish my definition, and I will answer that question. I didn't say that they are not defective intellectually. I said they are defective emotionally, morally and ethically, but not necessarily intellectually.

Now the type of people that's classified as psychopathic personalities is a great conglomeration. They throw everything into the rain barrel, so to speak—kelptomanias, pyromanias, sexual perverts, drug addicts, alcoholics, pathological liars, swindlers, and so forth.

Q. What is the distinguishing difference between a psychopathic personality and a dementia praecox in regard to recovery and in regard to inception of the diseases or conditions?

A. A psychopathic personality does not recover because he was born with an inferior constitution and he is not going to recover from that inferior constitution. Dementia praecox may recover. A small percentage of them do recover. Now, as to the beginning—a psychopathic personality begins, as I said, at birth or in very early childhood, while a dementia praecox does not begin until
1458 around fifteen or sixteen years of age on up to, say, thirty.

Q. Now, you have diagnosed Tom Robinson, Junior's case, or, rather, did diagnose his case in 1929, was he in your opinion a dementia praecox then?

A. Yes, sir.

Q. Was he, in your opinion, then a constitutional psychopath?

A. No, sir. We have got no history of anything abnormal in his life up until the time his break came when he was in school.

Q. So that is the distinguishing difference, a psychopathic personality or constitutional psychopathic patient

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or person is born that way, whereas the dementia praecox develops it or turns into it at sometime beginning, as you say, fifteen years and up.

A. That is correct.

Q. You mentioned delusions a while ago, Doctor. Are there any such things as systematized delusions?

A. Yes, there are. Those delusions are usually of a persecutory nature. They get ideas that people are mistreating them and they hold to that idea and it is not very changeable, and it becomes systematized, as we speak of it.

Q. Even though the delusion is based upon a false premise?

1459 A. That's correct.

Q. Does the patient or person usually hold to those ideas?

A. That's correct.

Q. Now, is there such a thing as a subjective mind?

A. Well, that's—yes, that's part of it.

Q. Isn't that the mind or that type of mind or state of mind in which the ideas are formulated?

A. That's correct.

Q. Now, I will ask you if the objective mind is not the mind that carries into effect the ideas that are formulated in the subjective mind.

A. Yes, sir.

Q. I'll give you an example and you tell me whether it is right or wrong. In my subjective mind the idea is formulated that I should walk through that door, and objective mind causes me to get up from this seat and walk through that door. Now is that a coordination of the subjective and objective mind?

A. Yes, sir.

Q. Now, with those types of mind before us, what about these paranoid types of dementia praecox with reference to their control over their willpower?

A. Well, they can't do what they know they should do, very frequently.

1460 Q. Do you mean that they have no willpower to control their actions?

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A. Well, there is quite a difference in their thought and their emotional reaction, it is not properly balanced, and they think to do one thing but their emotions cause them to do the opposite. You may tell something that's very serious, and in place of having a long face and feel sorry, probably they will laugh in a very silly manner.

Q. Is that what is known as a hebephrenic type?

A. Well, that occurs in the hebephrenic type, but not necessarily just in that type. As far as the different types of dementia praecox, is it very seldom that you ever get one true pure type. In other words, to say that they are all paranoid, or all hebephrenic, all catatonic, or all simple, it is seldom the case. As the usual thing you have some of—two or three in every person that is diagnosed dementia praecox, and we usually try to type them by the one that has the majority of the symptoms.

Q. Is it possible in dementia praecox to have two very opposite personalities, that is, is it possible to have, say, the super-man or grandiose personality and in the same person to have a persecuted or persecutory type?

A. They usually go together.

1461 Q. That's what constitutes the schizophrenia, is it not?

A. That's part of it; yes, sir.

Q. What is schizophrenia?

A. Well, schizophrenia is the same as dementia praecox. It is name that was given to it by Bleuler, which means a dual personality.

Q. Split personality?

A. That's right.

Q. Jekyll and Hyde.

A. Yes, sir.

Q. One day or one moment one thing, another moment or another day an entirely opposite personality, is that right?

A. Yes, sir.

Q. From what you know of Tom Robinson, Jr. and his condition, would you say that he was a paranoid type of dementia praecox?

A. We didn't type him. We said that he was a case

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of dementia praecox. He had a great many of the paranoid characteristics, but the statement which we gave to the court and which we made at the hospital, we didn't specify because we thought he had some of the other types too, and the different types doesn't mean a great deal.

Q. Now this syphilis condition that you read 1462 about in Dr. Gayden's statement, would that ordinarily, considering what you already knew of Tom Robinson, Junior's condition, aggravate his dementia praecox or would it help it in any way?

A. Well, it would probably aggravate it. However, he didn't have syphilis when we had him.

Q. No, he did not contract that, or, rather, the record does not show he was treated for that until 1932.

A. His blood and spinal fluid were both negative when we had him.

Q. Assuming that he in 1932 or sometime prior thereto had contracted that disease, would you then say what you already knew about him, that the syphilis aggravated his dementia praecox conditions?

A. Well, it certainly couldn't help it any.

Q. Assuming that, without repeating all of those facts and matters and things contained in that history chart or hospital chart that you had and read before the dinner period this evening, and assuming the facts and report to be true that you and other doctors in June, 1929, reported to the Criminal Court, Circuit Court of Davidson County, Tennessee, and assuming that after Tom Robinson was in the institution at Central State Hospital for the insane, having been adjudicated an insane person and legally committed to that institution; and assuming that after 1463 he was released from that institution, either just before that or just after that, speaking, of course, of the Central State Hospital, that he was again adjudicated an insane person by a court of the Davidson County, Tennessee; and assuming that his father, Thomas Robinson, Sr., was appointed his legal guardian; assuming that this legal guardian had this Tom Robinson, Jr. committed to Western State Hospital for The Insane at Bolivar, Ten-

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nessee; and assuming further that his father some three months thereafter effected or procured, or obtained or had his release from the Western State Hospital over the strenuous objections of Dr. Cocke, then Superintendent of that institution; and assuming further, Doctor, that after Tom Robinson, Junior's release from that last institution named, that his father took him on the road in an effort to stabilize him by taking him on trips in the car, and that afterwards Tom Robinson obtained a position with the Wayne Lumber Company, for which he worked some time but quit or was discharged; and assuming further that his personality changed, that he was given to tantrums and violent fits of temper at home and cursed and abused his parents, whereas formerly he was an obedient child and son; and assuming that his married life was stormy, and that he, while married to his second wife, went into violent rages and tore her dress off of her on one or more occasions, and that he tore his shirt

1464 into shreds; and assuming further that he did not stay employed in any one occupation or endeavor for long, that he was either unsatisfactory and he quit or was discharged; and assuming further that he was, or believed he was, the reincarnation of Patrick Henry, and that he felt or entertained the delusion that Patrick Henry had been reincarnated into his body or personage; and assuming that he felt that as this reincarnated Patrick Henry that it was his duty to carry on where Patrick Henry left off some years before; and assuming that in the year 1931 he came to Louisville, Kentucky, and obtained employment with the Stoll Oil Company here as a filling station attendant, and that he worked at that position for some six weeks, and that he quit voluntarily, that he then went to an insurance company as a debit or route man, that he then gave up that job or was discharged because he either disliked it or his services were not satisfactory, and that he at various times went to different jobs and to different places, and back and forth to his home in Nashville; assuming that he at one time worked for the DuPont Company just outside of Nashville, and that he got involved with some women who

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charged him with obtaining their jewelry or in assaulting them; assuming that those charges never resulted in his prosecution; assuming that he was or felt himself to be a super-man, super-type, and that he went to Chicago and procured employment as a janitor in an apartment hotel or house, that he went to South Bend, Indiana, and was either unemployed in that type of work or was not employed for any length of time; and assuming that he endeavored from time to time over a long period to get various positions, that he made applications for various jobs, and that when he was in those positions he thought he could run their business better than they could run it themselves, and that he tried to install and implant his own ideas in those institutions; and assuming that he has given as reference, among others, Mr. C. C. Stoll, his former employer here in Louisville; assuming that his inability to obtain employment aggravated his already impaired mental condition, and that he then assumed in his own mind an idea that C. C. Stoll was persecuting him and following him and blocking his efforts to obtain employment, and that he made so many applications for employment that he decided to write a book on how to get employment, that he felt that he could by reason of his having made so many applications, could direct others in that field although he, himself, had failed; assuming that he went to Chicago, rented a Ford automobile under the pretense of meeting his aunt from Nashville, Tennessee; assuming that he took this automobile and did not return it; assuming that he went to Indianapolis, Indiana, that he rented an apartment under an assumed or alias name; assuming that in Chicago or South Bend he probably used assumed names; assuming further that while in this apartment in Indianapolis, Indiana, he used a Corona typewriter and two pages of legal sheets on which he prepared this ransom note:

"TO THE MEMBERS OF THE STOLL FAMILY:

"WARNING: Stoll has been kidnaped for ransom. Overcome your first natural impulse to call in the police. Otherwise, you will regret it.

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"The life of Stoll, and later on the lives of his sons and their families, depend on the Stoll family reading this letter thoroughly and obeying our instructions from the beginning and for all time thereafter.

"Read this letter and you will realize that we mean business. We want the money, not the life of Stoll, but if you let the police know the details of this letter, or where payment of the ransom money is to be made, or if there is any evidence that you mean to double-cross us by sending a dummy package, watching the intermediary named in this letter, or otherwise try to set a trap for us, we are prepared to do this:

"Kill Stoll and burn his body; scatter his ashes in a stream of water; clean the galvanize tank in such a manner as to defy a microscopic examination of it. There will be no ashes left to analyze. This will keep the law
1468 from finding the corpus delicti, or body of Stoll.

"This is no idle threat. We are fully aware that kidnaping is punishable by death in Kentucky, and also we would be subject to the death penalty under the Federal Law, or Lindbergh Law, if we were forced by the publicity to take Stoll or his body over a state line. However, the capitalists with their power got this law passed, as it could not be wrong to rid this country of the capitalist, or make him share his money with his less fortunate brothers. It would be an act of patriotism to kill this capitalist, Stoll, who was overheard to say, concerning Roosevelt and NRA, 'Mr. so-and-so, we are in the hands of a dictator. We capitalists do not know what to look forward to; we are conserving our money; why, I would not spend one dime to even paint up my filling stations.' No, he wouldn't, but he will spend plenty to get returned to his family alive. He is really in the hands of a dictator now. It is this octopus, the capitalist, who is menacing the very foundations of our country. It is a serious mistake for right-thinking men to declare it an offense to kill or kidnap for ransom a capitalist.

"However, we cannot aggravate our offense any by killing Stoll, if we have to. He is the main witness against us, and his body could not be produced, so the law could

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not prove we killed him.

1469 "We are taking Stoll to our farm. We have already been told that we would be dispossessed within ten days for not paying rent. Our money is low. We are not able to feed ourselves for long, much less Stoll. We are just about as desperate as once-respected working men can get, harassed as we are by capitalists such as Stoll, Mellon, Morgan, Insull, etc.

"From these conditions, there is no time for a bunch of negotiations between us, other than those in this letter. No bargaining.

"In the kidnapings of Baby Lindbergh, William Hamm, Jr., Jake Factor, Charles F. Ulrich, Nell Donnelly, Charles Boetcher II, etc., the police were called in and the federal men too, yet the families were forced to pay the ransom money, because the police were unable to solve the cases in time to prevent payment. The police only delayed the return of the victim, and caused more suffering all around. Once you call in police, you cannot get rid of them when you discover that they cannot bring your father back, and you would like to go ahead and pay the ransom as directed, but they won't let you contact the kidnapers.

"You cannot deal secretly with the police, either. There is always some crooked cop who will tip off a newspaper reporter for a sum of money.

1470 "You would be unable to catch us in time to save the life of Stoll. We are not the average run of criminal, as you have found out. The police cannot go out to some pool hall and round up our gang. We have no record. It is useless to look in the conventional Rogues Gallery for our pictures. Our job is too carefully planned and executed. Police will waste your time having you run down to the station to look over suspicious or known criminals. Then it will be too late for you to save Stoll's life. We cannot wait over a week for our money.

"Results of having to kill Stoll: Besides sentimental reasons, the family will not be able to collect his life insurance, because you cannot furnish proof of death, as there is no corpus delicti; his business will suffer from lack of his leadership and prestige; the bank loans are

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based on the strength of his life insurance, and when they find out how he was done away with, and that his insurance cannot be collected, they will press the company for more collateral on their loans.

"Complete instructions for payment are on next page: Turn over.

Amount of ransom \$30,000, \$15,000.00 to be in \$10.00 bills and \$15,000 to be in \$20.00 bills. Put this money in as small a paste-board box as possible pack and wrap it carefully so that it will be accepted by the Railway Express Agency; declare the value of package at \$10.00; do not state what it really contains.

"Address it carefully and plainly; then send it by Railway Express only, to the intermediary who Stoll and one of our members agree on before he is taken from the house.

"This intermediary's name will be filled in at the bottom of this page by Stoll. It will have to be one of several business men living in Nashville, Tennessee, who we know to be a friend of Stoll, and who we are prepared to watch in order to see if you try to set a trap for us. We will allow Stoll to choose one of these men.

"This intermediary must have absolute freedom from police. He must not even be questioned by anyone. You must not correspond with him. If he is put wise, the deal is off, and we will carry out our threat as to Stoll. We must have a clear opportunity to contact the intermediary. We cannot do that with police surrounding the house. If they do, you can take our word that we will know of this fact in advance, and then we will make no effort to collect the money, but will then do what we have said we would about Stoll.

"Starting the day after the kidnaping, we give you five days, including a Sunday, to get the money into the hands of the intermediary. This means that it must be sent on the fourth day in order to arrive on the fifth. Do this sooner, if possible, as the sooner Stoll is returned, the easier it will be on him.

"Then, just as soon as we get the money into our hands, Stoll will be released unharmed. To this we give you our

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word.

"We will call Express Agency in Nashville and see when your package arrives. We will call from a pay station far from where we hold Stoll.

"Do not take the serial numbers of the money. If you make any publicity of this case after Stoll is returned, or try to catch us in any way afterwards, we will shoot down your family from our car with a 30-30 rifle.

"Do not waste our time or yours trying to reduce the ransom. You can get \$30,000 or else.

"There can be no other negotiations. We do not have time to bargain. If you delay and stall for time, we have told you our position, and what must happen to Stoll. We have no other alternative if we do not receive the money. This job is so arranged that no one outside the Stoll family will know what has happened at the start. It is for you to keep it that way.

"Explain Stoll's absence as illness or say he is out of town.

"If this is given to police or press, nothing can save Stoll.

1473

"Name of Intermediary"

and the words "to be filled in by Stoll" were later scratched out, either by pen or pencil, and the name of the intermediary is inserted, or was inserted by the defendant himself as being "T. H. Robinson," the father of this boy, "Street 1716 Ashwood Ave., Town, Nashville, Tennessee."

"We assure you that package of money, will not get into wrong hands so do not try to contact this man, as it may upset plan of pay-off."

Assuming that he, after preparing that type of ransom note and with the idea or inspiration that he should kidnap Stoll, and that he was being motivated to do it by this delusion that he had or this persecution that Stoll was persecuting him and preventing him from getting jobs, and that he drove in this automobile that he had rented in Chicago, but had not returned to its rightful owner; that he came

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to Louisville on October 8th, stopped at the Tyler Hotel, and that he first went to the home of C. C. Stoll and did not find him there, but instead found a maid; that using as a pretense to gain admission to C. C. Stoll's home, he declared himself to be a telephone company employee or representative, and that he had come to check the phone, that not seeing C. C. Stoll or his wife, Mrs. C. C. Stoll, that he went next door to the home of George Stoll, and

that he was admitted to that home by the nine
1474 year old daughter of George Stoll and by Mrs. Stoll, who was thereabouts; and that he used a similar

pretense to gain admission into that house and went upstairs and pretended to be checking the phone on the second floor of that house, but that he left without carrying into effect any idea there; that he went on October 10th to the garage on Bardstown Road and inquired of a way to Berry Stoll's home, and said that he had been there some months before, but had gotten misdirected or did not remember exactly where Berry Stoll's home was, and that he told this employer or garage man that he did not want to use the River Road to go there, and that he went to the Berry Stoll home on Lime Kiln Road on the afternoon of October 10th, 1934, and used as a pretense to gain admission to that home that he was a telephone employee, and that he there encountered the maid at that home, and that he there saw Mrs. Stoll whom he claimed he knew but which it is denied, and that he under a pretense to get to the extension phone went upstairs and there located Mrs. Alice Stoll in her guest room, and that there was some conversation, and that she said to him, "What are you doing here?" and that he responded, "I am here to kidnap you," and that Mrs. Stoll responded, "My husband will soon be home and you must not be found here,

1475 and I will offer you a check for a sum of money; but which was never indicated nor filled out, and that he proceeded to bind the maid and loosely bind Mrs. Stoll or, as it is claimed, he tightly bound her and put adhesive tape over her mouth, and that he struck her with an iron pipe, which is very much in dispute and is denied by him, and that the blows from the pipe on her head caused con-

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siderable bleeding, which is also vigorously denied by him, and that he left the maid in a bound condition in that apartment, or home, or room, and that he then left with Mrs. Stoll and took her to the apartment in Indianapolis, Indiana, and that he before leaving left this ransom note, not in its original prepared state but changed to this extent, "Intended for C. C. Stoll at first and Mrs. Speed," and on the second page, "Same for Mrs. Stoll except amount \$50,000.00," with the amounts corrected as indicated, and that Mrs. Stoll was kept with him at the apartment in Indianapolis or stayed with him, the fact of which is in dispute, for some seven days, and that upon the seventh day after some letters had been written in regard to the ransom money mentioned in this letter, that a sum of ransom money was delivered by his wife, Mrs. Frances Robinson, and that he left that apartment after taking from that ransom money some sum of money which is likewise in dispute, and that he drove away in his then stolen automobile or the stolen automobile which he

1476 had been using; that his first stop was Springfield,

Ohio, that he used an assumed name at that point, and that he went from there to New York City where he stayed at the best hotels, including the New Yorker, some St. George Hotel in Brooklyn, and some others, and that he was there in New York for a period of time and did not try to conceal his identity in any manner; that he went to the polo grounds, baseball park, with a friend that he had met at Rye, New York, or the beach cottage at Rye, New York, and that he then associated himself with the person by the name of Jean Breese, a New York girl, and that he before meeting Jean Breese frequented night clubs and made acquaintances openly and without any pretense of deception or detection, or disguise, and that he used assumed names to register in apartments and hotels, and that he then went to California, and before going to California that he bought a Plymouth automobile, that after he went to California he bought a Packard automobile, and that he came back across the country in one of those automobiles mentioned, and then went back to California, and that he rented a bungalow type of home there at the rate of

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\$150.00 per month, and that before doing so he had stayed or registered at some hotels, that he had changed the ransom money into cold money, as it is termed, or washed it to obliterate the finger-prints, that he would wire

1477 money ahead to change its form from ransom into cold money; that this woman in California who rented him the bungalow or home was taken away with him, sold on him a hundred per cent, and thought he was it, and that he had a contact with this woman out there for a period of about a week in which period she took him from place to place, demonstrating or showing him various homes; that during all that period that he left the apartment at Indianapolis he was under an assumed name; that on May 11th, 1936, after his whereabouts had been divulged by the woman with whom he had associated himself and had been over the country, turned him up or turned him in, as is sometimes designated, to the FBI in Los Angeles, and that he was brought back to Louisville by airplane, taken from Bowman Field, kept in the Starks Building all night of the 12th,—all day of the 12th and all night of the 12th, and most of the day of May 13th, and was brought out to federal court in this very court room, shackled and under heavy FBI guard, and was handcuffed, and that he was denied counsel; that his mother was here and was hysterical; his father finally arrived here, but was intoxicated; that he did not have an attorney to assist him or advise him to plead one way or the other; and that he had twice been adjudicated insane and had not been restored; and that he was taken from here and

1478 placed in the penitentiary in Atlanta, then Leavenworth, then Alcatraz, where at the latter place he spent some between six and seven years—I will ask you, assuming all of those facts to be true, Doctor, whether in your opinion Tom Robinson, Jr. was suffering, on and after and before October 10th, 1934, from such a perverted and deranged condition of his mental faculties as rendered him incapable of distinguishing between right and wrong or unconscious at such time of the nature of the acts charged in this indictment, and I will assume further that he was

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indicted and brought to trial here and pleaded not guilty, while committing these acts or where, though conscious of them and able to distinguish between right and wrong, and to know the acts were wrong, yet his will, his governing power of his mind, was otherwise than voluntary, and whether or not it was completely—his will was so completely destroyed that his action was not subject to it, but beyond his control.

A. I would say that he knew right from wrong, 1479 and I think he knew right from wrong when I had him at Central State. I think the majority of insane patients do know right from wrong, but that he couldn't do right because of his mental condition. I would feel that, assuming the things to be correct that you have told, that he had not recovered from the mental condition which he had when we had him in 1930.

The Court: Well that was not the question that was asked, Doctor.

Witness: It wasn't?

The Court: No. He didn't ask you whether he had recovered or not. He asked you—repeat the question again.

Q. I asked you, if he did know right from wrong, whether he had the control over his will and governing power to keep and prevent him from doing the things that he, as you say, knew to be wrong?

A. Well I don't think he had the control over his will, because he didn't have when we had him, and I don't think he did there.

The Court: I think first that I had better instruct the jury that the facts given in the hypothetical question by Mr. Hogan are true for the purpose of the question. The jury 1480 will not take the position that all such facts have been proven. Some of them have been and some of them may have been contested.

For the purpose of this question they are merely assumed. I don't want the jury to believe that they are admitted by either side, all of them. Whether or not they do exist will still be a question for the jury to decide.

Mr. Hogan: That is all.

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Cross-examination by Mr. Brown.

Q. In other words, you think Robinson knew the circumstances of any criminal act which he had or might commit?

A. Yes, sir, I think he did.

Q. And you think he knew right from wrong?

A. Yes, sir.

Q. Now what type of dementia praecox or schizophrenia do you think Robinson was in 1930?

A. Well, we didn't type him.

Q. Well, just type him now?

A. Well if we could say that he was definitely one type we would have said so then but we considered him a mixture.

Q. Of what type?

1481 A. Of the paranoid type and of the catatonic type and of simple type.

Q. What do you mean by "catatonic type"?

A. A catatonic type is one that apparently goes into excited stages without any apparent reason. Of course, there are many other things about it, but that particularly applies to him and we had had a history of him doing those things with his family.

Q. Now you are basing largely your diagnosis of the catatonic type upon the history given to you by himself and members of his family aren't you?

A. That is correct. He didn't show any indications of excitement during the time that we had him in the hospital.

Q. As a matter of fact, that catatonic type is characterized by stages of stupor or excitement, isn't it?

A. Yes, sir. He was not the catatonic. You asked me what he had of those different types. If he had been catatonic, of that type, we would have diagnosed him.

Q. Now of the types that there are, which classification of schizophrenes would bring him into either the paranoid or the catatonic or hebephrenic type.

A. Paranoid.

1482 Q. Now, Doctor, if that was true, what reasonably might you expect Robinson's condition to be

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today?

A. Paranooids deteriorate rather slowly—more slowly than do others, but after this number of years you would expect, in a large percentage of cases, to be deteriorated.

Q. Very decidedly?

A. 85% to 90% of the cases.

Q. Now, looking over there, he does not appear to have deteriorated that way?

A. I wouldn't want to pass on him because I haven't examined him.

Q. Aren't they very careless in their appearance?

A. Yes.

Q. And suffer with extreme delusions?

A. Yes.

Q. Now, Doctor, let's see if—in the constitutional psychopath or psychopathic personality there are certain subdivisions? Doesn't Dr. Kahn represent that?

A. There is no accepted psychopathic personality.

Q. It is a sort of a waste basket—

A. (Interrupting) That is exactly what it is. It is a very unsatisfactory diagnosis and a very unscientific one.

1483 Q. That is not a mental defect is it? That is a character defect, isn't it?

A. They are not mentally deficient. They are intellectuals—usually brilliant.

Q. And it is more of a character defect, more than anything else?

A. Well yes, emotionally and morally, and ethically.

Q. Aren't about 40% of the adult criminal population of the United States, where you have repeated offenders, made up of that type or not?

A. I wouldn't say.

Q. You wouldn't want to hazard a guess on that, would you?

A. No.

Q. You do know that a large number of criminals are psychopathic personalities?

A. Yes.

Q. A large percentage of them?

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A. A large number of psychopathic personalities are criminals, but all criminals are not psychopathic personalities.

Q. Yes. Now there is one classification of psychopathic personalities that is called pathological liars and swindlers, isn't there?

1484 A. Yes.

Q. Now let's read this: "They are egocentric individuals whose social maladaptation consists of extravagant, often apparently purposeless lying, frequently combined with swindling. They exhibit a marked excitability of imagination combined with an instability of will. They are usually good-natured, of agreeable manners, optimistic, of a light-hearted geniality, and make social contacts easily. These qualities and ready tongue, self-confident manner, a frequently assumed dignity and a misleading appearance of knowledge readily enable them to convince the credulous as to their statements. They acquire a smattering of art, literature or technical parlance which they employ to their own profit and to the expense and humiliation of their victims. They spin remarkable tales as to their past experiences and paint their future with a careless disregard for reality. Some are guilty of sex offenses and others obtain large sums of money under promise of marriage. When discovered in their delinquencies they profess amnesia, and if charged with legal offense they often stage an emotionally affected exhibition designed to impress observers and arouse sympathy. They are restless and unstable, and are capable of exertion or responsibility. They never learn to meet the struggle for existence with industry and perseverance but live in a world of
1485 imagination and seek to acquire the necessities of life by deceit and fraud." Now isn't that a fair statement?

A. That is a good statement of a pathological liar.
Mr. Brown: That's all.

Redirect Examination by Mr. Hogan.

Q. Have you any reason to believe now, or did you have any reason to believe in 1929, from what you have

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known and the facts to be assumed, that this defendant is a pathological liar?

A. No, sir, I never caught him in any lies.

Recross-examination by Mr. Brown.

Q. As a matter of fact, wasn't there a considerable discussion down there between the staff whether this man had a dementia praecox or pathological personality?

A. Yes, there was some discussion of a pathological personality. We always discuss all the possibilities.

Q. And at that time your hospital did not have any social workers to make investigations for it?

A. No.

1486 Q. Didn't you have to rely, almost exclusively on the case-history as related to you by his father and mother and his wife?

A. And his attorney.

Q. And his attorney. Now, as a matter of fact, Doctor, if there had been known to you at the time that you made your diagnosis that up to the time he was admitted to the asylum or within a short time prior thereto, that Robinson had been carefully provided for by his family; that he had been given all the necessities of life, and raised under favorable circumstances, and up to a period of approximately two years before that he had not been in any financial want and therefore found no need to deviate from the normal to secure money or the wherewithall to purchase luxuries or to satisfy his wants to such an extent as to discourage any criminal act upon his part, might not that fact, if it was known to you, made a very different picture of your diagnosis?

A. Yes. We would have had to know, though, at what age those things started, whether they started in very, very early life or whether he had been abnormal from birth or very early childhood. We got no history of any abnormality up until puberty and beyond puberty.

Q. But if you had known that Robinson, at the
1487 age of 16, had been supplied with a car that cost about \$800.00; that he had been furnished with all the luxuries or necessities that he might want; that he

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was the only child of his parents; that in 1927 he married; that this so-called forced marriage may or may not have had any effect on him; that in 1929, January 1929, six months before he was committed to your institution he was married again; that he and his wife desired to set up a home of their own; that they wanted to move away from his parents' home and did not want to live in her parents' home; that they wanted to acquire an apartment of their own, and there for the first time he was faced with the necessity of providing for a family of his own and of taking care of himself and, facing those facts, if you had known that he had committed two robberies, might that have made any difference in your diagnosis?

A. When were the two robberies? How early in life?

Q. Shortly before he was committed to your institution and within a period of 3 months when he first began to need these necessities of life—the money to provide him with the necessities and luxuries of life?

A. It was our impression that the change came more from the stress of difficulties in life that he was not able to meet, and that he did not show anything abnormal early in life. We discussed the psychopathic personality. However, we believed he was insane, regardless. It was a question of whether or not it was a psychosis or a psychopathic personality. It was the paranoid type.

Q. Yes. I understand that, but I am asking you if, assuming all of those facts which I am asking you to assume to be true, would you have made a different diagnosis?

A. Not unless they were earlier.

Q. What do you mean by "earlier"?

A. Well it was my impression that you said they came a year or two before he came to the hospital.

Q. Well they might have come 8 or 10 years before he came to the hospital?

A. Well, that is probable. If they came early in life, certainly I would have.

Q. You mean your diagnosis might have been different?

A. Yes.

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Q. But if he had been provided with all of the necessities and luxuries, would there have been any necessity to have committed crime for money?

A. There wouldn't. However, psychopathic personalities do things that there is no necessity for.

1489 Q. Yes, but I am asking you, might not his diagnosis have been psychopathic personality?

A. If he had started those things early in life.

Redirect Examination by Mr. Hogan.

Q. How early in life?

A. That is a difficult thing to say. A large percentage of them begin in early life. A large percentage of them begin getting into difficulties in grammar school and steal little petty things in grammar school.

Q. When 8 or 9 year old kids begin breaking windows, etc.?

A. Maybe not breaking windows, but they begin to steal and lie, etc.

Recross-examination by Mr. Brown.

Q. He begins to steal when the necessity of getting what he needs is denied him?

A. Not necessarily. I have seen psychopathics that stole in grammar school when their families provided everything for them.

Q. But they get into major crimes only when they are deprived of the necessities, don't they?

1490 A. I don't know whether I am an authority on that or not.

DR. THOMAS J. CRICE and DR. LEON L. SOLOMON were called as witnesses by counsel for the defendant and, after having been first duly sworn, they were examined and testified as follows:

Direct Examination of Dr. Crice by Mr. Hogan.

Q. What is your name?

A. Thomas J. Crice.

Q. What is your business or profession?

Testimony of Dr. Thomas J. Crice

A. I am a physician.

Q. From what school or schools are you a graduate?

A. I am a graduate of the University of Tennessee in 1907.

Q. In what branch of the University of Tennessee.

A. Medical Department.

Q. Are you now a regular practicing physician in the City of Louisville, Jefferson County, Kentucky?

A. Yes, sir.

Q. How long have you been such?

A. About 34 years.

Q. How old are you?

A. 62.

1491 Q. Following your graduation from the Medical Department of the University of Tennessee, I will ask you if you had any other special training or internship?

A. I located near Paducah, Kentucky, my old home and practiced medicine two years after I graduated in medicine. At that time I received an appointment as assistant physician and assistant superintendent for the Central State Hospital for the Insane at Lakeland from 1909 until the latter part of 1912. After that service I located in Louisville. I practiced what we know as general medicine here about 22 or 23 years. After that time I began specializing in mental diseases. I taught psychiatry or mental diseases in the Sts. Mary and Elizabeth Hospital in this City for 16 years. I was appointed Assistant Psychiatrist in the Criminal Court in Louisville about 7 years ago. I then associated with the psychiatric staff in the Louisville General Hospital for nearly seven years. Aside from a general practice of mental diseases, I am in private practice.

Q. Are you now on the staff of the Jefferson County Lunacy Commission?

A. Yes, sir.

Mr. Brown: I don't believe I know what that is. I have never seen that in the statutes.

The Court: Well, is there any such Commission?

1492 Mr. Brown: No, not according to the statutes.

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Q. State your duties?

Mr. Brown: I would like to know what that is.

Witness: I have just said that I am a member of the Commission of Associated Psychiatrists for the Criminal Court here in Louisville.

Mr. Brown: Are you appointed by the Judge to examine one week and certain other doctors are appointed to examine another week?

Witness: That's right.

The Court: Well, each appointment is for a specific case, isn't it? There is no standing appointment, is there?

Witness: We serve once a month.

The Court: One day a month?

Witness: About two and half or three days in examining cases and appearing in court. And there are two other physicians that appear once a month.

The Court: Well, do you know whether or not the appointment is an individual appointment for each individual case? It may be the practice on the part of the Judge to make the same appointment, for two or three days in succession, but isn't there an appointment for each particular case?

Witness: I would assume—

1493 The Court: Well, do you know?

Witness: My appointment is to examine cases that are up for consideration or committment in the criminal court.

The Court: Well we know that, that is why you would be over there, to examine those people. But what we are interested in, are you appointed for a period of time or just for one particular case and then reappointed for the next case?

Witness: No, sir, it seems to be, as well as I can understand it, an appointment to examine people to be committed to various institutions.

The Court: Unless you gentlemen can agree on it I think you had better get the statutes. I think the order of appointment would control.

Mr. Hogan: Can you enlighten us on that, Dr. Solomon?

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Dr. Solomon: Dr. Crice and I are on duty and are paired under the statutes to examine those against whom there has been a filing for lunacy, and we serve for a period of 2 weeks. We went on duty yesterday afternoon and we will go off duty two weeks from yesterday afternoon, next Tuesday a week we will go off duty for a period of 2 weeks and then we are back on duty, but the ap-
1494 pointment, Your Honor, is continuous. And frequently during the period when we are not on active duty we are asked by the Judge to see special cases.

The Court: I have no doubt that that's true, but the question was whether or not you are a member of a Commission?

Dr. Solomon: We are a member of the Lunacy Commission for Jefferson County.

The Court: Or whether you were just individually appointed for each particular case. The statutes can be consulted over night and see whether there is any such thing as a Lunacy Commission.

Mr. Brown: Yes.

Q. Dr. Crice, from the time you were graduated from the University of Tennessee, have you had occasion to and have you diagnosed and treated many or few mental cases?

A. I have diagnosed and treated many cases.

Q. Do you have any idea how many?

A. That would be pretty hard to estimate. While I was serving at the Central Hospital for the Insane at Lakeland I examined and treated 400 or 500 new patients a year aside from caring for several hundred others. Since I have been limiting my practice to psychiatry, I see probably a dozen cases of mental diseases a week,
1495 sometimes less, in my private practice. I see from 25 to 30 for adjudication at the criminal court per month. I see a few cases in consultation with other doctors.

Mr. Hogan: Now, if Your Honor please, do you want me to stop with this witness and qualify the other doctor?

The Court: Are you going to ask that question again?

Mr. Hogan: That long question?

The Court: Yes. I want you to ask it to both of them

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at the same time.

Mr. Hogan: I wish I had that question written up so I could read it.

The Court: Well if you are going to ask that question, qualify Dr. Solomon too and then ask them that question both at the same time.

Mr. Hogan: I really would prefer to have that long question written up.

The Court: All right.

Mr. Hogan: I will just ask Dr. Solomon his qualifications.

1496 Direct Examination of Dr. Solomon
by Mr. Hogan.

Q. State your name?

A. Leon L. Solomon.

Q. Where were you born, Doctor?

A. Louisville.

Q. Have you always been a Kentuckian?

A. I have lived in Kentucky throughout my lifetime.

Q. From what school or schools are you a graduate?

A. I am a graduate of the Medical Department of the University of Louisville. I am a graduate, I hold a diploma, from the University of Berlin.

Q. Have you engaged in the practice of medicine and psychiatry since your graduation from any of those colleges?

A. I have been a so-called internist throughout my lifetime, doing no surgery whatsoever—always engaged in the practice of medicine, and have been known as a family physician until 1917 when I entered consultation practice.

Q. Did you spend any time in continental Europe in any research work or in any particular work?

A. Well, I spent 3 years for the most part in Germany, in the university towns or cities of Germany,
1497 Bonn, Heidelberg, Zurtsberg, Munich. I spent about 3 months in London, and about 3 months in Paris.

Q. What about Straussberg?

A. I was at the University of Straussberg.

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Q. What about Vienna?

A. I was in Vienna for six months.

Q. What did you do in those places? What was your mission over there?

A. I did post-graduate work in the university cities and hospitals.

Q. Did you specialize in any field of medicine or mental diseases while you were there?

A. I prepared myself to be an internist, and did laboratory work and pathology and refgenology—that is x-ray work.

Q. Did you become associated or study in Europe under any celebrated doctors or authors?

A. I was a pupil of Prof. Wasserman, and I was a pupil of Prof. Erlich. In my time in Germany there were the medical centers, so to speak, of the world for the most part of that time, in Germany, in Vienna and in Prague.

Q. Well were you ever taught on the continent of Europe the Mendelian theory

A. Prof. Mendel, one of the early of the so-
1498 called psychiatrists which in those days was known as nervous and mental diseases was a profound pupil of the monk, the Catholic man, Mendel, who himself was not a physician, but who was a botanist and a biologist. The Mendelian Theory of Heredity, Prof. Mendel, the doctor, followed after Prof. Mendel, the Moravian monk.

Q. How long did you spend in Europe in the pursuance of your education?

A. I was 3 years in Europe.

Q. After you returned from Europe, what profession did you engage in?

A. I came back to Louisville—I came in as a teacher at the old Kentucky School of Medicine. Thereafter organized with a group of men of my age the Kentucky University Medical Department which absorbed the University of Louisville and thereafter led to the absorption of the other three regular medical schools of Louisville.

Q. Did you practice your profession in all of those years that you have mentioned?

A. I have been continuously engaged in the practice

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of medicine here in Louisville throughout all of my years.

Q. How old are you?

A. I was 72 in September last.

1499 Q. Did you ever establish, or have any part in the establishment, of any clinic in Louisville?

A. In 1917 I retired from the visiting practice and organized and established a clinic which I carried on for 13 years.

Q. During 1917 or about that time did you have any part in the establishment in Kentucky of any venereal disease stations?

A. During the World War I was Director of the Bureau of venereal diseases under the State Board of Health of Kentucky in affiliation with the United States Public Health Service.

Q. Now have you any other training or qualifications that you desire or may add to what you have already told us about?

A. They say self praise is half scandal. I taught medicine for 25 years, starting at the bottom as a bottle washer at the University of Louisville and became a professor of theory and practice of medicine at the University of Louisville when Dr. Marvin died, and continued to teach the chair which he had occupied from 1913 to 1917, when I resigned.

Q. Now, what nationality are you?

A. Well I was born in Kentucky, and I must be
1500 an American. Do you mean what is my religion?

Q. Yes?

A. The Jew does not have any nationality. I am a Hebrew. My mother and father were Jews, born and reared in southern Germany.

Q. Are you married, Doctor?

A. I am married.

Q. Are you married to a Jewess or to a person of another nationality or what?

A. My first wife was a Jewish woman. My present wife is a Presbyterian.

Q. Do you have any children?

A. We have, not an adopted but a foster child. A child

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that was given to us 8½ years ago.

Q. Is that a Jewish child or an americanized child?

A. That child had a Protestant mother and a Catholic father who, when he gave her to me, desired that she be raised as a Catholic child, and I have raised it as a Catholic.

Q. You are Abie's Irish Rose mixed up into one, aren't you?

A. What?

Q. You are Abie's Irish Rose—

Mr. Brown (Interrupting): Well I don't know
1501 that I can stipulate as to that.

Q. Meaning, of course, the play by that name where a child was of one religion and the other of another.

Mr. Hogan: All right, Dr. Solomon.

DR. THOMAS J. CRICE was examined and testified as follows:

Direct Examination continued by Mr. Hogan.

Q. Dr. Crice, are you married?

A. Yes, sir.

Q. What is your religion, if you have any?

A. I am a Presbyterian.

Mr. Brown: Your Honor, I do not think it is important in this case to know whether they are married or are of any religious denomination. I don't know that that adds to or detracts from their profession.

The Court: I think we are more concerned with their professional training and experience which has been rather fully gone into.

DR. LEON L. SOLOMON was then examined and testified as follows:

Direct Examination continued by Mr. Hogan.

1502 Q. Dr. Solomon, have you, in your years of medical experience, had occasion to diagnose and

Testimony of Dr. Leon L. Solomon

treat mental cases?

A. I think I can say, without braggadocio, that I have seen a vast number of mental diseases, both as a student before I began the practice of medicine and since I have been a practitioner.

Mr. Hogan: Now, if Your Honor please, I think that bears on their qualifications.

Now I would like to ask Dr. Crice some questions. Should Dr. Solomon retire?

The Court: I think you had better take it separately. Let Dr. Solomon retire to the halls while you interrogate Dr. Crice.

(Whereupon Dr. Solomon left the court room.)

DR. THOMAS J. CRICE was examined by counsel for defendant, Mr. Hogan, and testified as follows:

Direct Examination continued by Mr. Hogan.

Q. Dr. Crice, what is your idea as a medical expert, of the term "hallucination"?

A. We have auditory hallucinations, hearing voices. We have visual hallucinations, seeing objects
1503 that do not exist.

Q. What is a delusion?

A. A delusion is a false idea that cannot be corrected by reason?

Q. What was that last?

A. That cannot be corrected by reason.

Q. What is psychosis?

A. Psychosis is insanity.

Q. Is that commonly known as disease of the mind?

A. Yes it is.

Q. What is a psychopath?

A. A psychopath is an individual that is insane. We have the psychoneurosis, we have the psychophrenia, and we have the neurosenia and the major hysteria. We have a lower classification of lower mentality that is also psychopath, epileptic, imbecility, morons. They are all under

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a classification of psychosis or mental deficiency.

Q. What is the paranoid type of dementia praecox?

A. Paranoia, the paranoid type of dementia praecox, is a continuation of this disease of insanity that we call dementia praecox. It is a continuation into a state of grandeur with systematized delusions, because it is a continuation, in many cases, of a disease of the body,
1504 o a following out or continuation of some other mental disease.

Q. What do you mean by a "systematized delusion"?

A. A systematized delusion is particularly seen in paranoia. Paranoid dementia praecox. They build up the paranoid ideas with systematized delusions in their minds. Some of it is of a religious character, some of it is of a litigation character, some of it is of a jealous character. It is a webbing or winding around in their minds of systematized delusions, usually of persecution.

Q. What are usually the first symptoms of a dementia praecox personality?

A. A dementia praecox personality, it develops in young individuals from the age of 15 to 30. Usually they have been unstable prior to that. They have a disorganized conduct. Their mentality may be bright, it may be brilliant. They may be splendid students. It is owing to the character or kind of dementia praecox that they are suffering with.

Q. Well, when do you run into these brilliant types of dementia praecox or, rather, what are some of their symptoms—these brilliant types?

A. The precocious or brilliant type of dementia praecox, paranoid form, have had capacities to learn. Some of them go through college and they go up to a
1505 certain point in life, and when competition or failures or great disappointments come, they can't stand that. Therefore, where a business deal, or a business venture, or when this, that, or the other goes wrong, they want to incorporate these systematized delusions of persecution and unfaithfulness toward everybody they come in contact with.

Q. Do they have a tendency to blame their plight upon

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others?

A. That is characteristic.

Q. Is persecutory state the first stage, or is that a middle or intermediary stage of dementia praecox?

A. The systematized delusions of persecution is really the pathognomic or there is certain evidence of the paranoid type.

Q. Would you say that a person who becomes morose is in the stages of dementia praecox?

A. In many cases of dementia praecox there is a moroseness at times, there is a seclusiveness and there is a shyness. There is an inclination to want to retire from reality or to get away from society in general or even from the world, and hide.

Q. Are those symptoms the first manifestations of dementia praecox?

A. That is often the early evidence of dementia praecox.

1506 Q. Now, does a dementia person stay in that form or does he travel on to some other form such as the persecutory form or the paranoid form?

A. He may, of course, die from some intercurrent disease, or he may stay in a simple form. He may stay in what we call a catatonic form. He may stay in the hebephrenic form. That is the active form of a very vicious, extreme type individual, with extreme activities with mental deterioration. He may go out and develop a typical dementia praecox with paranoid trend.

Q. Now, I want to find out now whether or not these well educated and brilliant-appearing types or personalities may or may not yet be insane?

A. I think all forms of dementia praecox is insane.

Q. Well, does it follow, from your version, then, that these precocious personalities on the surface appear sometimes to be the unusual type and yet be a dementia praecox?

A. That is the paranoid form. That is the form that we expect to go into the paranoid trend of persecution.

Q. Is that type person any the less insane because he appears to be brilliant?

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A. Sometimes he is more insane, and more dangerous.

Q. In other words, to be insane, you do not have
 1507 to be a frothing-at-the-mouth person or an imbecile or an idiot?

A. Not at all.

Q. Now tell us some more about the paranoid tendencies in the dementia praecox type?

A. Dementia praecox, with paranoid trend, is an individual, he may have associated insane tendencies. He may be over-sexed. He may be a sex pervert. Or he may be one that wants to kill all the time. Many of them do. He may be one that has ideas of grandeur about what he can produce. Some of them believe that they can make mountains out of mole hills, that they can make gold out of corn husk, and that they can make diamonds out of wood. Those are some of the insane bizarre, balloon ideas.

Q. Now would those persons that you have described, would they be insane?

A. Yes, sir. Some further believe that in their grandeur ideas that they are sent on earth by God to preach to everybody, to convert everybody to their petty form of religion. Some believe that they should be anti-social, that they should go back to the farm, or that they should be anti-government, or that they should be anti-this or anti-that or anti-the other, and they like to project their ideas in this paranoid insane frame of mind on to somebody else, and heap all of their troubles upon some-
 1508 body else's misdeeds.

Q. Are they still persons of insane qualities?

A. Very much so.

Q. Do they ever take unto themselves the role of re-incarnated personages?

A. In their grandeur, oh yes, they get into the idea that they are some great personage, that they have been cheated out of their knighthood or their royal position in the world by some deception from a supposed enemy. They pride in having great ideas of important persons. They will trace their blood, their kinsmen back for hundreds of years when they have no history whatever—it is all just a delusion.

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Q. It is an idea based on false belief. Is that right?

A. Yes. They never had any ancestry back any farther than their own father and mother so far as they know but they will trace it back 200 years, without any record at all.

Q. Do they have an abiding faith or belief in that ancestry?

A. Yes; that is one of their petty, fixed, insane bizzare delusions?

Q. Is that to them a real belief?

1509 A. Yes, they get a great deal of enjoyment out of it. They live in a heavenly atmosphere at times, believing in those grandeur ideas.

Q. Are those types of persons insane?

A. Yes, sir.

Q. Now do you know the mind to be divided into the subjective and objective mind?

A. We believe the mind—

Mr. Brown (Interrupting): When you say "we" do—what do you mean by that?

Witness: The medical profession.

A. We believe that they have a subjective mind and an objective mind. Our subjective mind is the seat of our deep thinking, our conclusions, our originated ideas. That is passed on to our objection mind for direction. The objective mind is in an unconscious state or not in a receptive state. There is nothing to guide this mind, this subjective mind. The objective mechanism isn't there to carry out or perform its ideas.

Q. What about the willpower of these dementia praecox persons? Do they have control over their willpower?

A. It is well known that they have a poverty of ideas, and a willpower that is not stable.

Q. Well do they have a power to prevent their
1510 carrying into effect some act that they may know to be wrong?

A. Yes, that is the idea of describing a subjective and an objective mind. The subjective mind creates the idea and the objective mind carries out the intention, but if you have a poverty of ideas, if you have an unconsciousness of the objective mind, the willpower is lost. He doesn't recog-

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nize what he does, when he does it or how he does it.

Q. In other words, down to plain earth, he gets an idea and does it and can't control himself. Is that what you mean?

A. That is the substance of it, yes.

Q. Are those persons who get those ideas and carry them out, with no control over them, insane?

A. Yes, sir.

Q. May they sometimes know right from wrong?

A. Yes, at lucid intervals where they have cleared up with some treatment or some rest they may have intervals that by persuasion or by advice they realize that in the height of their wild theories of grandeur desires, they don't know right from wrong.

Q. Well are there stages when they know right from wrong and yet can't control their actions?

A. Yes.

1511 Q. In those stages where they know right from wrong, would you say that those types are still insane persons?

A. Yes, their willpower, their judgment, is destroyed. They can't make decisions of what is right and what is wrong. The drive of the subjective mind seems to have full sway.

Q. The subjective mind then is the idea-forming mind?

A. It is the mind of origination of ideas. Our thinking capacity.

Q. Then in order to be a sane person, you would have to have a subjective mind where ideas formulate, and an objective mind capable of putting the brakes on those ideas. Is that right?

A. Full coordination between those two minds.

Q. If there is not full coordination between the subjective and the objective mind, you then are insane. Is that what you mean?

A. Yes, sir.

Q. Do you know this defendant, Thomas H. Robinson Jr.?

A. Yes, sir.

Q. Have you gone into his history and background?

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A. I examined the defendant in the County Jail
1512 on November 8th and November 9th and November 15th.

Mr. Brown: What year?

Witness: This year.

Q. Did you obtain a history from him on that occasion, Doctor?

A. Yes, sir.

Q. What was that history?

The Court: I believe if we are going to hold to our—you are starting in on a new line of questioning which might lead us quite well into the night before we get through. If it is agreeable with you, we will suspend at this time.

Mr. Hogan: That's all right.

The Court: Members of the jury, I want to thank you for being here tonight with us instead of taking your ease at the hotel as you have done. We are all trying to close up this case, if we can, within a reasonable time.

Remember my admonition to you not to discuss the matter among yourselves, or with anyone, or permit anyone to discuss it in your presence; and the added admonition that I gave you this afternoon, please do not eat too heavily either tonight or in the morning.

We will adjourn until 9:30 in the morning.

1513 Met pursuant to adjournment, at 9:30 a.m.,

Thursday, December 9th, 1942, with proceedings as follows:

Direct Examination of Dr. Crice by Mr. Hogan (continued)

Q. Do you know the defendant, Dr. Crice?

A. Only from the examinations I made in the County Jail on November 8th, 9th and 15th of this year.

Q. State whether or not the use of alcohol or intoxicating drinks has an effect upon a dementia praecox person?

A. The excessive use of alcohol upon a normal mind will produce excitement, small amounts; in large amounts it will produce a drowsiness and also a tremor, a delirium tremor. In a defective mind it is almost like pouring gaso-

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line on fire. A little alcohol will disturb and excite a mental patient quicker than anything I know of, and more alcohol will further have a tendency to deteriorate what mental capacity he might have left.

Q. What effect does the use of alcohol in a person who has contracted syphilis have?

A. The use of alcohol upon a syphilitic, particularly the nervous system and mind, is well known. Alcohol seems to have a great influence in aggravating and increasing the severity of syphilis.

Q. Now, I believe in syphilis there are some
1514 tests that are made to determine the type of syphilis in the system, is that correct?

A. Yes, sir.

Q. Are those tests always uniform and always determinative of the presence or absence of the condition?

A. No, sir, particularly in the later stages of syphilis, they are not dependable. Now, if you please, I will describe the tests for syphilis, we call it the Wasserman tests, that is, the examination of the blood and also the spinal Wasserman and Kahn, it is called the spinal fluid. These tests determine whether or not the germ of syphilis is in the human blood or in the spinal fluid. Now, when the patient is under intensive treatment, these tests are liable to be negative because the treatment will so eradicate the germs of syphilis that the test is not positive. That is termed in scientific words as Wasserman test, that is, the reaction is not positive under intensive treatment. Sometimes the reaction is not positive without treatment, it isn't a hundred per cent. In older cases of syphilis where you expect organic diseases of the brain, like paresis or locomotor ataxia, the tests for syphilis is rarely positive, rarely, because it is believed the germs of syphilis have become intercellular or hidden away, so to speak, until the individual reaches the mid period of life and his de-
1515 fense process is declining, and then the activity of the organism presents itself and we have this organic disease of the brain that we call paresis or syphilis of the brain, or general paralysis.

Q. Now Dr. Crice, assuming that this defendant,

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Thomas Robinson, Jr., had been a normal boy up until his fifteenth or sixteenth year, and that he then had malaria, pneumonia, tuberculosis, pleurisy, and he was out of school for about a year, and that following that event of forced marriage in his life at the age of some nineteen or twenty which shocked him and changed his personality, and that following that he changed from a sociable type of boy that got along well with his fellow associates, both men and women, and with his parents, and that he would go into rages, have a glassy and crazy stare in his eyes at times when he would get mad, and assuming that he had worked for Mr. C. C. Stoll here in Louisville, Kentucky, or the Stoll Oil Company, and had severed his connection with that company and had later gone out and made applications for various jobs and had given, in most of those applications, Mr. C. C. Stoll as a reference, and that later this defendant whom I have named, Thomas H. Robinson, Jr., had an idea that Mr. C. C. Stoll was blocking his efforts to get employment, although Mr. C. C. Stoll had on the other hand written a good letter of recommendation to this young man—would you say that was an insane delusion in the mind of this boy?

1516 A. I will have to answer that rather piece-meal.

Q. All right, sir.

A. The diseases that you have enumerated, any one of them or all of them, in the early youth could produce what is known as toxic psychosis or insanity from poison being eliminated from the body into the main brain. That is known as a toxic psychosis. That would have been sufficient to have produced a toxic psychosis at that time.

Q. What do you mean by psychosis? Now these people over here, and I don't know that I know—let's find out what psychosis is.

A. I tried to explain that a time or two. Psychosis is the technical name for any character of insanity, psychosis, a psycho mind.

Q. Then we have a toxic insanity, as you have said.

A. That is usually a manifestation of a disturbed mentality after long sieges of the various diseases that you have just enumerated. Now, with a dementia praecox

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development, at that particular period, these diseases certainly would intensify this character of insanity coming on in young individuals. Now this character of insanity is—we thing it is psychogenetic; psycho, insane; genetic, to generate, *genésis*. Is that plain enough?

Q. I think so. Now, carry on to the other part
1517 of my question, whether or not that was an insane delusion he had.

A. Therefore, I am trying to get to the background of your dementia praecox. The dementia praecox developed at an early age because there was something in his mental mechanism that discontinued to develop. He had a perverted idea. He had a change of trend of thought. He began to fit into the classification of dementia praecox—seclusion, excitement, tantrums or irritability, unable to proceed and get along with people, unable to proceed with his normal studies. The acceptance of the habit of alcohol was an abnormal situation. No one, I don't believe, becomes an alcoholic, to say nothing of alcoholic insanity, unless there was something wrong with him before.

Q. Now, you are treading on a lot of people's toes, when you say—

A. Now let me go over that again, please. I am speaking of alcoholism as a constitutional disease producing a psychosis, alcohol psychosis, in many instances. I am talking about excessive alcoholism. I don't mean a morning toddy or a night-cap at all, but anyone that engages in the excessive use of alcohol, particularly the young, may be laying the ground for some mental development—dementia praecox or whatnot—makes them more sus-
1518 ceptible. In the older individual, or course, we know alcohol affects the liver, affects the heart, affects the arterial system, in excess. Is that plain?

Q. Does that excess, or, rather, more than mild use of alcoholics, vary with the individual?

A. Oh, yes. There are some people that can drink, a young individual, a great deal of alcohol and they will have mild intoxication or severe intoxication, and after a few hours or a few days they eliminate the poison, and with a lot of food, with elimination of the bowels, they

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escape without seemingly much damage. Other individuals, with a modest amount of alcohol, are more susceptible, nervous individuals, will become excited, even have delirium tremens with a small amount of alcohol, may be days or weeks in getting back to their normal state of mind.

Q. Now tell us about Mr. C. C. Stoll's—rather, this boy's ideas of Mr. C. C. Stoll's blocking his path.

A. Those trends of persecution, big ideas, and the rich dominating the poor, and the idea that the wealthy is an enemy to the working man, was purely a paraneid type or trend of persecution in this character of mental disease. It was build-up, it was an extension, it was going upstairs, you might say, it was pyramiding.

Q. Do you believe that he had the willpower to dispel that trend or that idea, or that delusion, as you
1519 care to call it.

A. No, I don't believe he realized the seriousness of it, he didn't realize what it meant, what it would lead to. I don't believe that he had that much judgment, that much of mental capacity.

Q. Well, it has been said that he was a personable type of man, very pleasing personality, made good grades.

A. That was prior to this episode, if I understand it. He made good grades in the common schools, according to the history, he made—

Mr. Brown: Wait now, let me object to this. We haven't heard any facts upon which Dr. Crice's testimony is based.

The Court: No.

Q. Eliminate that part of it, the grades he had. Now, with reference to his ideas of persecution of him by Mr. Stoll, in your opinion do you believe that he had the will to control that idea or delusion?

A. My personal opinion is that Mr. Stoll did nothing to him to create this idea.

Q. What is your medical opinion of it?

Mr. Brown: Do you know anything about it at all?

The Court: You don't know anything about it, do you, Doctor?

The Witness: My medical opinion, Judge, is that it

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1520 was an insane delusion.

Mr. Brown: I suggest, Your Honor, that we are entitled to have the facts before the Doctor begins to expound.

The Court: I believe the Doctor will have to predicate his answer on some hypothetical question, Mr. Hogan, that has not yet been put into the record, if you are ready for that question.

Mr. Hogan: I wanted to propound that general question to both of them.

The Court: He has got to have something to go on. He just can't testify to the jury about what he thinks without having some facts before the jury.

Mr. Hogan: I will give him that a little bit later on, together with Dr. Solomon.

Q. Speaking generally and without reference to any particular persecution or delusion, do these paranoid types of dementia praecox have the willpower to carry into effect their ideas?

The Court: You are talking about people in general?

Mr. Hogan: In general.

The Court: No particular person.

Mr. Hogan: No particular person.

A. No, they don't.

1521 Q. Do they sometimes know right from wrong?

A. No. As long as they are under the domination of those delusions, paranoid type, they don't know right from wrong, they can't know right from wrong when they are obsessed with that character of mental delusions.

Q. Does that destroy their ability to distinguish between right and wrong?

A. Yes, sir.

Q. Is that a distorted idea?

A. Yes, sir.

Q. Doctor, even if they did know right from wrong, and even if you went so far to say that, would they still have the willpower to control their actions?

A. No, not under the circumstances which I have just described. The reason is because they are possessed with this disease and this insane idea. There is no reason in

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their minds under those particular delusions.

Mr. Hogan: Now I believe I will stop with him at this point until I have had Dr. Solomon. Then I will bring him back for this hypothetical question.

The Court: I believe that's a good procedure, and you can present the hypothetical question to both of the doctors at the same time. All right, Dr. Crice, if you will, step to the hall for a short while.

Mr. Hogan: Did you want to cross-examine him?

1522 Mr. Brown: No, I will wait until you get through.

Mr. Hogan: Don't go away, Doctor.

The Court: You will have to retire from the court room, Doctor.

Mr. Hogan: Dr. Solomon isn't here. I telephoned his office and they said they thought he was on the way here.

The Court: Have you any other witnesses you can take at this time?

Mr. Hogan: I have two other witnesses on the way. They should be here any moment now. If we can suspend for five minutes, I am sure that Dr. Solomon or either of these other witnesses will be here.

The Court: Gentlemen, we want to get through with this case, and I think counsel should impress upon their witnesses that it is very important to be here. Everybody else is here waiting for them. It is rather unreasonable for a witness just to be late when he knows he is supposed to be here to testify. However, if they don't come, there is not much we can do except wait for them.

I expect, gentlemen of the jury, we will have to take a short recess. I am sorry we can't go ahead. Do not discuss the matter, however, among yourselves in any way or talk about it to any person.

Give a short recess, Mr. Marshal.

Out of the presence of the jury.

At a conference in the Judge's chambers, out of the presence of the jury, at which the District Attorney and Mr. Hogan were present, the two witnesses, Mr. and Mrs. Joseph M. Hayse, were called in, it having been indicated to the Court by defense counsel that he proposed to call

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them as witnesses in behalf of the defendant, and such matter presenting some questions that the Court thought advisable to consider out of the presence of the jury, the following conference was held:

The Court: Now, Mr. Hogan, we have had one conference heretofore about Mr. Hayse's testimony in which the Court rules that the matters that you indicated you were going to ask him about were privileged, and I would like to know just what is the general nature of the questions you propose to ask him now, so we won't get into the same difficulty as we did before.

Mr. Hogan: The question of privilege came up when Mr. Fowler Woollet, in chambers, testified that he had consulted Mr. Hayse with reference to making a claim against the Stolls, and when the Court asked him if he desired to have that treated as confidential and privileged communication, he answered that he did so, and on that the Court refused to allow the testimony of witness Woollet to be contradicted on the ground that any conversation he had with Mr. Hayse was privileged conversation or communication.

1524 With reference to Ann Woollet, the situation is entirely different in that witness Ann Woollet denied ever consulting Joseph Hayse, or any attorney, or anybody, about making any claim, so if she never consulted any attorney, and that's her testimony, about making a claim, she could not claim a privilege and on that basis I attempt to show that she made certain statements.

The Court: You are going to show first, by these two witnesses, that Ann Woollet did consult Mr. Hayse.

Mr. Hogan: That they did go to his office and that she did make certain statements.

Mr. Brown: That's the same old question.

The Court: I believe you could probably ask the question whether or not she went to see Mr. Hayse and have Mr. Hayse answer it. I don't know that you can go any further than that.

Mr. Brown: Also, let's consider this one further point. Mr. Hayse testified on yesterday that Mrs. Hayse was not present in the office, that Mrs. Hayse was about to have a

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child, and that Mrs. Ann Woolet had come to his home on Confederate Place when these statements were taken down. Now I submit the first fact, that it is privileged communication, and the second fact, there is no basis in the world for the contradiction when on Mr. Hayse's own testimony it happened at Confederate Place, and on Mr.

1525 Hogan's question and the judge's finding it happened at the home of Mr. Hayse on Confederate Place, where his wife was, and that she was pregnant at that time and did have a child early in January of the following year.

Mr. Hogan: The statements were made in Mr. Hayse's office. Let's consult the record, on Page 643, which is the cross-examination of witness Ann Woolet, she was asked

"I will ask you if it isn't true that she (meaning Mrs. Alice Stoll) put her arms around you and kissed you."

and her answer was:

"Oh, for goodness sakes, no."

The next question on that page that is involved is:

"Did you move any furniture or arrange the furniture in the Stoll home upon your return back from the Speed home?"

Her answer was:

"I don't remember. I went to bed. I don't remember doing anything when I got back."

On page 644, she was asked the question:

"Did you ever tell anybody (that means not only Joseph Hayse but his wife or anybody) you found a large sum of money behind a pillow in a chair after your return to the Stoll home and after the return of Mrs. Alice Stoll to her home."

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Her answer to that was:

"I don't remember."

1526 The next question on page 644 propounded to her was:

"Do I understand you to say that you do not remember either finding the money, a large sum of money, and do I also understand you to say you do not remember telling anybody that you found any money?"

Her answer to that was:

"I do not remember."

Now, on page 652, she was asked this question:

"Did you ever make any claim, or did your husband ever make any claim, against Berry V. Stoll or Mrs. Alice Stoll?"

To which she answered:

"No."

Now, she cannot claim it privileged when she denies ever making a claim—

The Court: I don't agree with you there. You are trying to prove she did make a claim. Certainly you can't prove that and say she can't ask privilege too.

Mr. Hogan: Well, I can show that she has contradicted herself.

The Court: Certainly, even if she has, that doesn't mean she is not entitled to claim privilege.

Mr. Hogan: She was asked:

"Did you ever consult an attorney about presenting a claim against them, or did your husband?"

Her answer was:

"I did not."

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1527 Mr. Brown: Which is exactly true.
Mr. Hogan: Page 654:

"I will ask you if it isn't true that you went to the office of Mr. Joseph Hayse, an attorney in this city, together with your husband, Fowler Woollet, and didn't you consult him about presenting a claim against Mr. Berry Stoll and Mrs. Alice Stoll too?"

She answered:

"I do not remember."

The Court: All right. That's at the office.

Mr. Hogan: Yes. Next question:

"Well, do you say that you did not do that?"

Answer: "I do not remember it. I feel that I would remember it."

The next question:

"Did your husband do that?"

Answer:

"I don't know."

Question:

"Did you consult any other attorney in Louisville or elsewhere with reference to making a claim against either one of those Stolls that I have just indicated to you?"

To which she answered:

"Not that I remember."

Question:

"Well, you would remember it if you had done that, wouldn't you?"

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Her answer on Page 665 is:

"I think so."

1528 "Q. And you don't remember that?"

To which she answered: "No."

Now, on page 664, she was asked,

"Did you ever consult any other attorney than Mr. Hayse about this matter?"

Her answer was:

"I have never consulted any."

Now, Mr. Joe Hayse says—

Mr. Brown: Before we get into that, let's get the other factual situation. He introduced Fowler Woollet as his witness. Fowler Woollet said he did the consulting of Mr. Hayse, that Mr. Hayse's wife was not present at the office, that she was expecting a baby, and Mr. Hayse told him to bring his wife out to their home on Confederate Place, which he did. They went out to Confederate Place and in the presence of Mrs. Hayse certain statements were made. Now, so we will keep it straight in mind—

Mr. Hogan: I am not trying to contradict Ann Woollet by Fowler Woollet.

Mr. Brown: No. You introduced Fowler Woollet to show that Ann Woollet was not in the office, which was true, and according to Mr. Hayse's statement, the statements were made at Confederate Place.

Mr. Hogan: I am introducing Joe Hayse to
1529 contradict Ann Woollet. If I understand the contradictory rule, you can ask the witness if she didn't make certain statements upon a certain thing, he or she, and upon that witness answering no, you can bring or show that she did either by her husband or anybody that heard those statements.

Mr. Brown: Page 656, you asked:

"Now Mrs. Woollet, I will ask you if you on or about September 9th, you did not make these state-

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ments?

"The Court: Where, Mr. Hogan?

"Mr. Hogan: To Mr. Joseph Hayse, in his office, at which time his wife, Mrs. Nellie Stoess Hayse, was present."

Now you find it again, a question about Mr. Hayse's office, and I submit that no foundation has been laid to impeach Mrs. Woollet's testimony even on the ground that it is not privileged, and which it is, and which they claim.

The Court: Let's see if we can first agree on the facts.

Mr. Hogan: I have got it marked here—this is by the Court to Joseph Hayse, page 1305:

"Did Mr. Fowler Woollet come to see you, either in your office or your home, sometime in 1935?"

Answer:

"Mr. Fowler Woollet and his wife—"

The Court interrupted:

"Ann Woollet?"

1530 Joe Hayse continues:

"Yes, Ann Hobbs Woollet came to my office—they either came in or were brought in by someone."

Now there he is in his office.

Mr. Brown: That's right. We are talking about the statements. Get to the statements.

Mr. Hogan: All right, the next question:

"Taking it up from that point (still questioned by the Court), please detail the circumstances under which they came to you, what they inquired about and what was their purpose."

Answer:

"I had been consulted in regard to the Robinson case, and my recollection is that W. K. Powell knew

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that and I had discussed it with him. Powell brought these people in (he means to his office because you just asked him about his office) and he told me who they were and what he knew in a general way; and I took their statement (meaning Ann Hobbs Woollet, and Fowler Woollet) and they thought that they had a claim against Berry Stoll at the same time I took a very thorough statement of the Robinson case and all of its angles and views."

Now there is more to the answer.

Mr. Brown: Well, I think it varies very little in the—

Mr. Hogan: I will read it:

1531 "There was very little in the statement (there she did make a statement, Ann Hobbs Woollet) and there was very little in the statement of Fowler Woollet that particularly pertains, as I saw it, to their own claim against the Stolls. I discussed that with them thoroughly and it was a kind of ease—well, I just didn't think there was sufficient merit in it to justify my going into it or trying to handle it."

Question, still by the Court:

"That's the claim—"

Mr. Brown: No, that is not by the Court. That's by you. It would indicate by the Court, if it was by the Court.

Mr. Hogan: No, Judge Miller asked him that, because you asked him and then I asked him. This is by Judge Miller.

Mr. Brown: All right, keep on going.

Mr. Hogan: Next question then, by Judge Miller:

"That's the claim against the Stoll people?"

His answer:

"The claim against the Stolls, and I so told them that I was not interested in it and I didn't make any contract of any kind with them. They didn't pay me any fee. The first visit was to the office and I made ar-

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rangements with them to come out to my house, and Mrs. Hayse took the statement of Ann Hobbs Woollet in her own words and they came back evidently the next night in order to give her time to write it up, and she signed her statement at that time. There were two or three corrections made in it before she signed it, going over it carefully, and then we took the statement of Mr. Fowler Woollet and he gave that statement."

But in the previous answer Mr. Hayse said that he took their statement in his office.

1532 The Court: It looks like he corrected himself, doesn't it?

Mr. Brown: It sure does, and the only signed statement or statement that was written down was out at Confederate Place.

The Court: Have you got their statements?

Mr. Hogan: He took their statements.

The Court: I know, that's on Confederate Place, but later on he said he took it at the home. Did you have two statements or one statement?

Mr. Hogan: One statement. I mean, they told him in his office, words that were later reduced to writing. A statement may be written or it may be oral. I could make a statement here, but I do not reduce it to writing.

The Court: I think the statement you had was the written statement, which was taken in question and answer form, stenographic form.

Mr. Brown: That's the statement that Mr. and Mrs. Hayse were examining out there in the other office.

Mr. Hogan: I asked the witness, Mrs. Woollet, if she didn't make a statement. I didn't show her this statement.

Mr. Brown: You asked her the question following that statement.

Mr. Hogan: I asked her the question.

Mr. Brown: You followed down that written
1533 statement and asked her the questions.

Mr. Hogan: The fact that I had a written statement doesn't cut any ice in this case because the very pur-

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pose of contradiction is to show that at some previous time the witness had made contradictory statements.

"Now with further reference there—well, at the time when you took this statement, the rather full statement that you speak of, in your home, did you know and understand they were advising with you with reference to a possible civil claim which they had against either Mr.—"

The Court: (Interrupting) That refers to the statement by the Court—I am talking there?

Mr. Hogan: You are talking there.

The Court: Shows the impression I got.

Mr. Brown: There is no question about it.

Mr. Hogan: (Continuing)

"The original statement had been taken down at the office,"

Mr. Brown: Which it had not.

Mr. Hogan: (Continuing)

"but was given to my wife at Confederate Place."

He says, "The original statement had been taken down at the office."

The Court: If you have two statements here, go ahead and produce them. Maybe I am wrong.

Mr. Hogan: I don't have to produce the statement. I can produce the witness who wrote that statement.

Mr. Brown: You are referring to a written
1534 statement.

Mr. Hogan: There is not a single word in Ann Woollet's testimony about any written statement.

Mr. Brown: I beg your pardon.

The Court: The questions you asked her were read from a written statement, signed by her, wasn't it?

Mr. Hogan: Yes, but I asked her if she hadn't made previous statements.

The Court: You confined it to the office.

Mr. Hogan: At the office I am prepared to show by

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this witness that Ann Hobbs Woollet made those statements to him in his office.

The Court: Are we agreed on the fact, or can we agree on the fact, that Mrs. Woollet would claim privilege, or do you want her brought in to state that to the court?

Mr. Hogan: I don't see how she can claim privilege.

Mr. Brown: She can claim privilege.

The Court: She can come in and claim it whether you see it or not. I know Mr. Woollet claimed privilege, and he seemed to be acting for both of them at all times. Of course, if you are not willing to agree that she will—

Mr. Hogan: If the Government wants to make a liar out of their own witness—

1535 Mr. Brown: The Government is not making a liar out of their witness.

Mr. Hogan: She will have to admit she was in an office and consulted an attorney.

Mr. Brown: You put her husband on.

Mr. Hogan: You can throw him out of the window. It is what she says.

Mr. Brown: It is significant that the very statement you are talking about was taken right out at Confederate Place. You will have to show that she made a different statement at a different time. Apparently Mr. Hayse thought so until his recollection has been refreshed yesterday or day before, about the statements being made at Confederate Place.

The Court: I think the real question is whether or not it was a privilege communication. From what we had the other day, my views are very definite that it was, and from the testimony of both Mrs. Hayse and Mr. Woollet. So the only point that I think we have in mind is whether or not she wants to claim her privilege. If she does—

Mr. Brown: You agree she will claim it, or do you want me to go out and get her?

Mr. Hogan: I want her to come in here and face the music and claim it.

The Court: Is she here?

Mr. Brown: She ought to be in the witness room.

1536 The Court: Joe, was more than one written

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statement taken, question and answer form?

Mr. Hayse: Yes, there were two written statements taken, one of hers and one of his.

The Court: Yes, that's one only, one written statement of each of them, in question and answer form.

Mr. Hayse: This was not in question and answer form. When they came to the office I went over this very thoroughly, and, naturally realizing the situation and wanting to protect myself, I wanted to get a statement recited in their own words, and the statement they actually made here—

(The Marshal announced that Mrs. Woollet was not in the witness room.)

Mr. Hayse (Continuing): —was not, my recollection is, as full and complete as they told me in the office. This is in a narrative form, the statement they made to me in the office.

The Court: Was that reduced to writing?

Mr. Hayse: No, that was not reduced to writing.

The Court: That's what I am trying to get at. There was no more than one written statement.

Mr. Hayse: My recollection is, there was not.

The Court: Her written statement that was signed by her was written at your home and taken by Mrs. Hayse.

1537 Mr. Hayse: The written statement—

The Court: I am asking you if there was only one written statement signed by her.

Mr. Hayse: Only one written statement.

The Court: And that written statement was taken at your home?

Mr. Hayse: That's right.

The Court: And taken by Mrs. Hayse in shorthand and typed out by her at your home?

Mr. Hayse: That's right.

The Court: And whatever statement she made to you in the office was an oral statement?

Mr. Hayse: That's right.

Mr. Brown: I didn't think this was coming up. Last night I told Mrs. Woollet she could be excused. I will have

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to call her and have her come.

The Court: I will let you ask Mr. and Mrs. Hayse, if you want to, whether or not she came to the office or whether or not she came to the home.

Mr. Hogan: You want to do that now?

The Court: I think you better do that before the jury. You want the evidence before the jury.

Mr. Hogan: I will ask if she made a statement—consulted him about a claim or made a statement.

The Court: But the contents of that statement
1538 I am going to hold as privileged.

Court reconvened after the recess and the following proceedings were had:

JOSEPH M. HAYSE, called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Joseph M. Hayse.

Q. What is your business or profession?

A. Lawyer.

Q. How long have you been engaged in the practice of that profession?

A. In Louisville since April, 1923, previous to that time I practiced in Columbia, Tennessee, since March 3rd, 1917.

Q. From what school or schools are you a graduate?

A. Well, I began practicing law before I went to law school. I later went to the Cumberland University at Lebanon, Tennessee. I then went to Westminster Law School in Denver, Colorado, and then I later went to the Fordham University Law School, New York City.

Q. Did you ever attend West Point?

1539 A. I did.

Q. How long have you been practicing in Louisville?

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A. Since April, 1923.

Q. Are you acquainted with Ann Fowler Woollet?

A. Well, I saw her on two or three occasions, probably four, before I saw her in the court house.

Q. In September, 1935, were you made acquainted with her?

A. Yes.

The Court: What date?

Mr. Hogan: September, 1935.

Q. Tell the jury the circumstances of your meeting with her?

A. She and her husband came into my office to consult me and also concerning giving me a statement concerning the facts and circumstances in the Robinson-Stoll kidnapping case.

Q. Did she come to your office with her husband, Fowler Woollet?

A. She did.

Q. Was that office in Louisville, Jefferson County, Kentucky?

A. It was.

Q. In your law office here?

1540 A. In my law office; yes, sir.

Q. Did she consult with you on that occasion?

A. She did.

Q. About the facts of the Robinson-Stoll kidnapping case?

A. She did.

Q. And also with reference to a claim that she believed that she had against Mr. Berry Stoll and his wife, Alice Speed Stoll?

A. She did.

Q. Did she make some statements to you with reference to the Robinson-Stoll kidnapping case and with reference to her claim, or claim that she believed she had, on that occasion?

A. She did. She gave me a complete statement, going into every detail from beginning to end.

Q. Do you recall the date in September of the visit of Ann Hobbs Woollet to your office?

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A. I can't tell you the exact day, but it was either on the 9th of September or preceding that, within two or three days preceding that.

Q. Did she on that occasion give you a full, detailed and complete statement about the Robinson-Stoll kidnapping case?

A. She did.

1541* Q. When you say a full and complete statement, why was that full and complete statement given to you or taken by you?

A. Well, that statement that she told me orally was not reduced to writing, that is, the one she gave me in the office, but she gave me all the details.

Q. Whether it was written or unwritten, did she make certain statements to you in your office about this Robinson-Stoll kidnapping case and about her supposed claim?

A. Yes. She made statements concerning the entire matter about the Robinson-Stoll kidnapping and the way she was treated by the Stolls, told me all about it orally in the office and it was later reduced to writing, practically in substance, if not in the exact words.

Q. Did she make statements to you as to what happened in the Alice Stoll residence after Mrs. Stoll's return from Indianapolis?

A. She did.

Q. Was that an oral statement to you?

A. The statement she made in the office to me was an oral statement.

Q. Was that likewise, that statement I have just referred to, a full and detailed statement?

A. It was.

Q. Was that statement or those statements that
1542 she made to you then reduced to writing?

A. They were.

Q. I mean, in your office at that time?

A. No. They weren't reduced to writing in the office. They were reduced to writing in narrative form at my residence at 2216 Confederate Place, I think the date is the 9th of September, 1935. The statement reduced to writing is in narrative form and contains substantially

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what she told me in the office.

Q. But she did make a statement to you in your office.

A. She did.

Q. It has been stated by Mrs. Woollet that she never consulted you—

Mr. Brown: I am going to object to any recalling of testimony, any attempt of comparison.

The Court: I think that's a matter of argument. That testimony is already in.

Q. You stated that she later made a similar statement or a statement in substance of what she had told you in your office, made that statement in writing at your home.

A. She narrated the events at my home to Mrs. Hayse who took it down in shorthand and transcribed it into type-written form, which she later signed and swore to.

Q. Were you present when she dictated it?

1543 A. I was present when she narrated it to Mrs. Hayse; yes, sir.

Q. Did Mrs. Hayse procure the signature of Mrs. Ann Hobbs Woollet to that statement that had been reduced to writing?

A. She signed that statement, Mrs. Ann Hobbs Woollet, and swore to it.

Q. Did you see her sign it?

A. I can't say positively that I saw her sign it, but my recollection is that I did.

Q. Did she swear to it?

A. She did.

Q. Who swore her to it?

A. Mrs. Hayse.

Q. Were the statements that were reduced and contained in this written statement substantially the same that had been given orally to you in your office by Ann Hobbs Woollet?

A. They were.

Q. Don't answer the question until the court rules on it. Will you please tell this jury what statements Ann Hobbs Woollet made to you in your office and which were later reduced to writing in your home and sworn to by her?

Mr. Brown: That's the matter we discussed in cham-

Testimony of Joseph M. Hayse

1544 bers, Your Honor.

The Court: Objection by the Government. Members of the jury, the objection will be sustained on the ground that conferences between a lawyer and a client about a legal matter, upon which the client is seeking advice, are privileged communications and if the client so desires they are not to be repeated by the attorney to anyone else. Accordingly, the court holds that those communications are not to be divulged as they were made in confidence between a lawyer and his client about a legal matter the client was asking his legal advice upon.

Mr. Hogan: My point there is, Your Honor, that this witness, Ann Hobbs Woolet, is in an inconsistent position to claim—

Mr. Brown: I don't know that there is any point of arguing this point before the jury. We argued it thoroughly in your chambers.

The Court: I think you can raise that point in any argument you want. It has already been raised to me. I don't know that it is necessary for the jury to have it. It is purely a legal point.

Mr. Hogan: Then I will object to the court's ruling that Mr. Hayse may not answer or detail what he remembers Ann Hobbs Woolet to have said to him and what was later reduced to writing, and make an avowal that the witness, Joseph M. Hayse, if permitted to answer,

1545 would say and it would be true, certain statements of which we discussed also in chambers and which are in the written statement and which the stenographer has, without having to repeat them.

The avowal above referred to is as follows: 7

AVOWAL

The witness, Joseph M. Hayse, if permitted to answer, would say, and it is true, that Ann Hobbs Woolet came to his law office in Louisville, Jefferson County, Kentucky, on or about September 9th, 1935, and while there made oral detailed statements of, about and concerning the facts of the Robinson-Stoll kidnapping case, facts before the taking of Alice Stoll from her home, and facts that

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happened in the Speed home, and facts that happened after Mrs. Alice Stoll's return on October 16th, 1934, in the home of Alice Speed Stoll on Lime Kiln Road; that the witness, Nellie Stoess Hayse, if permitted to answer, and it would be true, would say that Ann Hobbs Woollet came to her home, being also the home of the witness, Joseph M. Hayse, at that time located on Confederate Place in Louisville, Kentucky, and that Ann Hobbs Woollet made certain oral statements to her of, about and concerning the Stoll kidnapping case before and after the taking of Mrs. Alice Speed Stoll, and after her return in October, 1934;

1546 that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say that Ann Hobbs Woollet's statements to Nellie Stoess Hayse were taken by Nellie Stoess Hayse in shorthand and later transcribed by Nellie Stoess Hayse on the typewriter into a written statement, and by Mrs. Ann Hobbs Woollet signed, subscribed and sworn to by Ann Hobbs Woollet on September 9th, 1935; that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say further, if permitted to answer, and those statements would be true, that the statement given to Joseph M. Hayse in his office by Ann Hobbs Woollet and the statement given to Nellie Stoess Hayse and Joseph Hayse in the Hayse home on Confederate Place is in substance, in words, figures and phrases, to wit:

"Before this time, she calls me up there, and wants me to bring her some pumpkin seed and I took them up there, and Robinson comes up and smiles at her, I thought it was just politeness then. She didn't look at him mean or anything, but just looked at him, I suppose you would call it a faint smile, but didn't crack her face. She didn't seem frightened or frantic, and was very calm. She must have known him before, as she didn't appear frightened, and did so much talking and kept her nerve, and she asked him what he was going to do there, I don't

1547 remember the exact words. I don't believe she made any reply to that right at that time. I think she just sort of sat and looked at him, sort of like she

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was thinking. She didn't seem to be particularly excited, or disturbed about it. I don't know who said it, but I know she wanted to offer him a check, and he wouldn't have that, of course. While she is sitting there in a rocking chair. He is nervous, he is afraid Berry Stoll is coming in there before he gets away, she seems to be in a hurry, I guess you call it, and he wants to hurry up and get away, get her all wrapped up before Berry comes home, and then she said, 'hurry' or 'let's go,' or something to the effect, showing that she was willing to go.

Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out, and everybody away, and John Tarrant took us to W. S. Speed's over on Lexington Road. Mrs. Speed entered the door and took us up to the servants' quarters and put us in a very cool room, a cold room. Just had a little bed and a dresser in there, and I thought I was in jail for sure. it was so bleak looking. It was in the early evening, about 5 or 6 o'clock. We didn't want to stay there, I just couldn't stand it, and I felt that I wanted to see
 1548 my mother, so bad, so I cried and took on pretty bad, and we wanted to leave, and Mrs. Speed wouldn't let us leave, she said, 'There have been orders for you to stay here,' and she had our supper sent up to us, then along about 8 o'clock, Mrs. Speed comes in and tell us 'Alice has been returned,' and she didn't act very thrilled, just calm. They had told us in the afternoon that she was going to be returned, that is why we had to leave the house.

After that we went to bed, and we spent the night there, and the next morning early I would say around 7 o'clock, she orders a taxi for us, and we get in this taxi, and go back to Berry Stoll's. Mrs. Speed asked me—I was downstairs in my bedroom—and she asked me to go up there and clean up Mrs. Stoll's room, as there were no women in the house. That was on Wednesday. So I went up to clean her bedroom, and see her, listen I went to see her, though,

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before I went up to clean, just as soon as I got back to the house, she put her arms around me and kissed me, and this just shocked me to death, because she is sort of cold natured, and while cleaning her room, dusting, I raised a pillow up on a longing chair, and I found a pile of money there, and it frightened me so I just dropped the pillow, and I don't know whether

1549 anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money. From then on, I didn't do anything, I was just up and down in bed most of the time, and then it was in this time that the doctor came to see me. After that I was just in bed most of the time. There never was anything said to me about the money. It wasn't fastened together, it was just sort of a nice bulk. It might have had a rubber band around it, I don't know. It was in currency. After I cleaned up the room, I went back to bed.

We stayed at the Stolls then until Sunday morning. Then Stoll came down and told us he didn't need us any more, it was not told in my presence but I heard it outside my room. I heard him tell Fowler simply that he wouldn't need us any more that he was going to close up the place, and he didn't want to see it any more. He said he might open it up in the spring, and Fowler asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up at all. I heard Fowler tell him that I was sick, I couldn't be moved, and he said, 'The sooner the better.' He didn't give any reason why we had to leave except he didn't want to see the place any more. Mrs. Stoll couldn't stand to see me. He said that we would all be better off.

1550 We just got ready and left, and before we left, Mrs. Woollet, Fowler's mother, Agnes Woollet, asked him for a written statement that 'These children were free of all suspicions,' and he said he would be glad to but he had to get permission from the authority or

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something before he could do it, and he never did do it. I told him that I would like to see Mrs. Stoll before I left, and he came down and told me that I couldn't see her that she was resting and was not feeling well."

Mr. Hogan: You may ask him.

Mr. Brown: I don't care to ask him.

Mr. Hogan: Call Mrs. Hayse.

Mr. Brown: Couldn't we agree, in the interest of time, that Mrs. Hayse would testify the same as Mr. Hayse?

Mr. Hogan: Well, I would like for the jury to see her.

MRS. NELLIE STOEES HAYSE, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. You are Mrs. Nellie Stoess Hayse?

A. Yes, sir.

1551 Q. The wife of Joseph M. Hayse, I believe.

A. Yes, sir.

Q. Are you an attorney?

A. Yes, sir.

Q. From what school or schools are you a graduate?

A. I have completed part of the law school work at the University of Louisville, but I have not graduated from that school.

Q. Have you been admitted to practice law in the State of Kentucky?

A. Yes, sir.

Q. Are you engaged in that practice now?

A. Yes, sir.

Q. How long have you been so engaged?

A. Since October, 1942.

Q. Were you married to Mr. Hayse in 1935?

A. Yes, sir.

Q. During the month of September, 1935, with particularity, September 9th, 1935, did you have an occasion

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to become acquainted with Ann Hobbs Woollet?

A. Yes, sir.

Q. Will you please tell the jury the circumstances of that acquaintanceship?

A. Well, I understand that Mrs. Woollet had talked to Mr. Hayse in the office.

Mr. Brown: Object to what she understands.

1552 Q. Not what you understand.

The Court: Objection sustained as to what you understand. Just tell what happened between you and her.

A. She came to the house and gave me a statement of what she knew or the facts that she knew concerning the kidnapping case.

Q. By that, to what kidnapping case do you refer?

A. The Robinson-Stoll kidnapping case.

Q. Did she make that statement or statements to you voluntarily?

A. Yes, sir.

Q. You were not an attorney at that time?

A. No, sir.

Q. Were those statements in rather minute detail?

A. Very minute.

Q. Did you take them in shorthand notes?

A. Yes, sir.

Q. Did you transcribe them later?

A. Yes, sir.

Q. Did she sign that statement that you had transcribed?

A. She did.

Q. Was the statement that was reduced to writing and that was signed by her, the statements that she
1553 had detailed or narrated to you?

A. Yes.

Q. Without any material change?

A. There were one or two slight corrections which were made when she re-read the statement.

Q. Who made those corrections?

A. She did.

Q. Was she afforded an opportunity to examine the

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statement that had been reduced by you to writing?

A. Oh, yes.

Q. To see if it was a correct statement?

A. Yes, she re-read the statement.

Q. Did she complain that it was not a correct statement?

A. No.

Q. Did she readily sign it?

A. Yes, sir.

Q. Were you a notary at that time?

A. Yes, I was.

Q. Did you swear her to that statement?

A. Yes, sir.

Q. I'll show to you, Mrs. Hayse, what purports to be that statement that you have related and which you say was reduced to writing, and ask you to examine it and tell this jury what date it bears.

1554 A. September 8th, 1935.

Q. Now, was it sworn to on that date?

A. On September 9th, 1935.

Q. How do you account for the difference in the date of the making and the swearing of that statement?

A. On September 8th she came and gave me the statement, and on September 9th she came back and re-read it and signed, swore to it.

Q. Is that her signature?

A. Yes, sir.

Q. Did you see her sign it?

A. Yes, sir.

Q. I will ask you to read to the jury the signature to it.

A. It is signed, "Mrs. Ann Hobbs Woollet."

Q. Is that sworn to by you as a notary?

A. Yes, sir, before me as a notary.

Q. Did she swear then that those statements contained therein were true?

A. Yes, sir.

Q. Did those statements bear directly and in detail upon the facts of this Stoll-Robinson kidnapping?

A. She swore that that was the statement which she

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had made.

Q. I say, did they bear directly upon that
1555 Stoll-Robinson kidnapping case?

A. Yes, sir.

Q. Will you tell the jury what statements she made to you and what statements you later reduced to writing and had her swear to? Before you answer, there is going to be an objection.

Mr. Brown: Objected to.

The Court: Objection sustained, on the same ground with reference to the statements made to Mr. Joseph H. Hayse.

Mr. Hogan: And I wish to make an avowal.

AVOWAL

The witness would say, and it would be true, if she were permitted to answer, that Ann Hobbs Woollet made the following statements:

“Before this time, she calls me up there, and wants me to bring her some pumpkin seed and I took them up there, and Robinson comes up and smiles at her, I thought it was politeness then. She didn’t look at him mean or anything, but just looked at him. I suppose you would call it a faint smile, but didn’t crack her face. She didn’t seem frightened or frantic, and was very calm. She must have known him before, as she didn’t appear frightened, and did so
1556 much talking and kept her nerve, and she asked him what he was going to do there, I don’t remember the exact words. I don’t believe she made any reply to that right at that time. I think she just sort of sat and looked at him, sort of like she was thinking. She didn’t seem to be particularly excited, or disturbed about it. I don’t know who said it, but I know she wanted to offer him a check, and he wouldn’t have that, of course. While she is sitting there in a rocking chair. He is nervous, he is afraid Berry Stoll is coming in there before he gets away, she seems to be in a hurry, I guess you call it, and he wants to

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hurry up and get away, get her all wrapped up before Berry comes home, and then she said, 'hurry' or 'let's go,' or something to the effect, showing that she was willing to go.

Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out, and everybody away, and John Tarrant took us to W. S. Speed's over on Lexington Road. Mrs. Speed entered the door and took us up to the servants' quarters and put us in a very cool room, a cold room. Just had a little bed and a dresser in there, and I thought I was in jail for sure, it was so bleak

1557 looking. It was in the early evening, about 5 or 6 o'clock. We didn't want to stay there, I just couldn't stand it, and I felt that I wanted to see my mother, so bad, so I cried and took on pretty bad, and we wanted to leave, and Mrs. Speed wouldn't let us leave, she said, 'There have been orders for you to stay here,' and she had our supper sent up to us, then along about 8 o'clock, Mrs. Speed comes in and tells us 'Alice has been returned,' and she didn't act very thrilled, just calm. They had told us in the afternoon that she was going to be returned, that is why we had to leave the house.

After that we went to bed, and we spent the night there, and the next morning early I should say around 7 o'clock, she orders a taxi for us, and we get in this taxi, and go back to Berry Stoll's. Mrs. Speed asked me—I was downstairs in my bedroom—and she asked me to go up there and clean up Mrs. Stoll's room, as there were no women in the house. That was on Wednesday. So I went up to clean her bedroom, and see her, listen I went to see her, though, before I went up to clean, just as soon as I got back to the house, she put her arms around me and kissed me, and this just shocked me to death, because she is sort of cold natured, and while cleaning her room, dusting, I raised a pillow up on a lounging chair, and I found

1558 a pile of money there, and it frightened me so I just dropped the pillow, and I don't know whether

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anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money. From then on, I didn't do anything, I was just up and down in bed most of the time, and then it was in this time that the doctor came to see me. After that I was just in bed most of the time. There never was anything said to me about the money. It wasn't fastened together, it was just sort of in a nice bulk. It might have had a rubber band around it, I don't know. It was in currency. After I cleaned up the room, I went back to bed.

We stayed at the Stolls then until Sunday morning. Then Stoll came down and told us he didn't need us any more, it was not told in my presence but I heard it outside my room. I heard him tell Fowler simply that he wouldn't need us any more that he was going to close up the place, and he didn't want to see it any more. He said he might open it up in the spring, and Fowler asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up at all. I heard Fowler tell him that I was sick,

1559 I couldn't be moved, and he said, 'The sooner the better.' He didn't give any reason why we had to leave except he didn't want to see the place any more, Mrs. Stoll couldn't stand to see me. He said that we would all be better off.

We just got ready and left, and before we left, Mrs. Woolet, Fowler's mother, Agnes Woolet, asked him for a written statement that 'These children were free of all suspicions,' and he said he would be glad to but he had to get permission from the authority or something before he could do it, and he never did do it. I told him that I would like to see Mrs. Stoll before I left, and he came down and told me that I couldn't see her that she was resting and was not feeling well."

Mr. Hogan: That's all, Mrs. Hayse.

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The Court: Any questions, Mr. Brown?

Mr. Brown: No, sir.

The Court: Mrs. Hayse, were you employed by your husband at that time?

The Witness: No, sir.

The Court: You helped him with his work?

The Witness: Yes, sir.

The Court: You took this statement at his request?

The Witness: Yes, sir.

1560 The Court: And he brought Mrs. Woollet to the home?

The Witness: Well, I am not sure whether he brought her or she came.

The Court: You didn't ask her to come?

The Witness: No, sir.

The Court: She came with him?

The Witness: I don't know whether she came—

The Court: He was present?

The Witness: He was present; yes, sir.

The Court: At all times?

The Witness: Yes, sir.

The Court: All right.

DR. LEON L. SOLOMON, called in behalf of defendant, resumed the stand, and was examined and testified as follows:

Direct Examination Continued by Mr. Hogan.

Q. Dr. Solomon, what do you understand a delusion to be?

A. A delusion is a mental state that is founded upon a false premise in which the condition of the mind is such as not to be able to argue out and to determine its incorrectness.

1561 Q. What is an hallucination?

A. That is a mental state, not necessarily associated with any permanence of mental disturbance, which may be brought about by drugs, alcohol, ether, chloroform,

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or someone of the so-called somnifacient drugs, the sleep producers, which act as delirifacient, as it involves—hallucinations involve those mentally disturbed. They are generally of two varieties, the so-called auditory hallucinations and those that are visual, the individual hears things, or thinks he hears things, insists that he does hear them, or he sees things, or thinks that he sees things that in actuality do not exist.

Q. Do you know whether in medical science, or as believed to be or exists, a subjective mind and an objective mind?

A. There is what the psychiatrist today undertakes to define as a conscious or subjective mind as against an unconscious or objective mind.

Q. I believe the thoughts or ideas are formulated in the subjective mind.

A. The conscious subjective mind formulates and discovers or invents ideas blood goes through the gray matter, which the objective mind should, if there is no riotous condition between them, be able to execute.

Q. In a normal person, should there be cooperation and coordination between the subjective mind and the objective mind?

A. In the individual who is perfectly balanced, or as near perfectly balanced as the human animal can be, there must be coordination between the conscious and the so-called unconscious objective mind.

Q. In a normal person, is there usually coordination between those two minds?

A. There is coordination between those two minds.

Q. What do you understand as a medical man of the term dementia praecox?

A. It is a very large subject in which, naturally, there are differences of opinion. As a rule, the dementia praecox is a precocious individual and has been as in the early years before the teen age has come about and thereafter, for some reason, or maybe without any known reason, that individual topples over and begins to show certain strange behavior types and attitudes running into a great variety of directions.

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Q. What is the term schizophrenia as understood by medical science?

A. The French psychiatrists talk more about schizophrenia than do we in this country. It is, as the word indicates, a so-called split or disturbed state of mind.

1563 Q. Now what do you mean by split mind or split personality? We are way up in the clouds now, we want to get down to earth so I'll understand it.

A. And it is very difficult to get down to earth with schizophrenics. They are strange, erratic personalities who may lead in a certain field and direction, and yet not be persistently and permanently dependable. As a rule, irritable, fractious, what we in Kentucky call "carrying a chip on the shoulder," and likely to take offense when no offense was intended and none should have been taken.

Q. Now, in these dementia praecox types, are sometimes the subjects pleasant and sociable, or apparently so?

A. They are as a rule pleasant, if they can be. Without rhyme or reason they become unpleasant, often morose, often melancholic. They make up what we call, and again I use the Kentucky phrase, "the hippos," the hypochondriacs, who are in states of exultation today and tomorrow may be in a state of dejection. They are what the French call "liable," up and down and not stable or stabilized.

Q. Then would you say that it is possible to have in one individual an unstable person and a stable person.

A. Oh, yes.

1564 Q. Varying at different times?

A. The stability being a matter of conditions that exist in the emotional nervous system and in the sympathetic nervous system, and the instability resulting from a riotous, unstable, instable condition in the nervous system.

Q. What is understood by the term paranoid type of dementia praecox?

A. The paranoid type has fixed delusions which he pyramids, from which he is unable to get away. They force him into acts which because of the instability of his nature will permit him to do or actuate him or impel him to commit some great act of depredation, violence, de-

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struction, set fire to a building for no reason, kill his best friend, for no reason, because of maybe voices that he hears, maybe instructions that he thinks he gets from powers on high.

Q. Do these paranoid types ever assume in their own mind that they are a reincarnated personage?

A. They sometimes have a religious trend in which they are at times, devout continuous readers of the Bible and will find in the Bible some justification for the thing they are about to do. They are unable to reason out because of fixed delusions, the justification of their act.

They not infrequently assume that they are super-
1565 men or super-women and are above the reach of moral law or of the law of the land.

Q. Do they ever assume the personages of patriots or statesmen?

A. They assume all kinds and sorts of personages. I had a lady at the jail the other day who had been out with Jesus and plowing fields, and when I tried to reason with her that so far as we knew this character he was not a farmer. She said she had told him that that is what he should do and he had given up carpentry.

Q. Now, have you any other example not quite so aggravated as that?

A. Many, many examples may be brought up by the physician of experience. I had a dementia praecox, I think he loved me better than he did his mother and his father, and yet as I slept in his room he raised a chair with the nurse out of the room at the moment and attempted to brain me, struck me over my knees and my shins, and when I cried out in pain he was very apologetic, but when I was able to get on my feet he said, "I wish to God I had killed you. I have been authorized to do it."

Q. Was that a manifestation of two types of dementia praecox within a few moments?

A. That was a young man who had suffered a terrific insult to his body and mind at college, where he
1566 had been taken out by older boys and masturbated and who lost his mind the next day.

Q. Does masturbation play any part in the deteriora-

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tion of the mind?

A. I beg your pardon?

Q. Does masturbation play any part in the deterioration or instability of the mind of a person?

A. I do not believe that masturbation deteriorates the mind. I think that the deteriorated mind, or in a state of temporary or permanent deterioration, is the cause of masturbation rather than an effect from masturbation.

Q. Would you say that same thing with reference to persons having sex troubles?

A. Dementia praecox is a disease of early adolescence. There are four internal glands. One is in the brain, the pituitary; one is in the neck, the thyroid; one is behind or above the kidney, the adrenal or suprarenal; the other is the testicle. Those four glands, I think, control man, and the dementia praecox as a rule is a masturbator. He is often times a sex pervert.

Q. Do these paranoid types of dementia praecox sometimes assume the role or idea of grandeur?

A. That is a phase of dementia praecox, but not nearly so likely to assert itself as is the grandiose ideas of the syphilitic.

1567 Q. Now you mentioned that syphilitic term.

Have you had experience with venereal disease, and particularly syphilitic, and are you fairly or at all familiar with the effect of that disease upon the mind?

A. I think I am fairly familiar with the influence of syphilis on the body and the mind of man.

Q. Suppose you tell the jury some of your qualifications along that particular subject and along that particular line as it affects the body and the mind of man, and woman too, for that matter?

A. I would say that no physician can practice medicine without a knowledge of syphilis. The civilized world is becoming syphilized. Syphilis in its manifest influence on the mind and body of man plays so important a role that the doctor must of necessity be a student of syphilis. I have striven to study syphilis throughout a lifetime.

Q. What have you found out that your study and treatment of that disease has upon the mind of man?

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A. Syphilis runs as a rule through three stages, a primary stage in which there is an ulcer, a secondary stage in which there is, as a rule, a breaking out on the body with what we call mucous patches, involving the mucous membranes, more particularly the throat. Syphilis untreated enters a third stage in which there is a
1568 generalized involvement, and untreated, sometimes treated, involves and destroys the central nervous system. It makes of the man or woman a so-called parietic, giving rise to what in former years the public called "white softening of the brain," an incorrect medical term it is. Treated, syphilis is curable. It has always in a sense been curable. I do not believe—I personally do not believe a man ever is cured in the sense that he is absolutely well. He is cured in the sense that he is well, but will in all likelihood have recurrences of the disease unless he has further treatment.

Q. Now, Doctor, I want to stop you there. You say you personally believe. I want your medical opinion as well as your personal opinion on that.

A. There were six hundred and six experiments performed by a noted Heidelberg physician, Professor Ehrlich, his six hundred and sixth experiment constituting what is known sometimes as "606" or "salvarsan," an arsenical preparation. Given in sufficiently large doses and with proper regularity, salvarsan removes from the blood stream what is known as the spirochete, a low form of life which for terms of better understanding might be called the germ of syphilis. It is not a germ. Properly treated over a period of time, the individual becomes more or less innocuous so far as his conveying the disease is concerned, he cannot convey it to another person, and the treatment
1569 continued with other remedies which have since the advent of neosalvarsan and salvarsan come into use, more particularly bismuth, the man or woman with syphilis goes ahead and lives out his span of life irrespective of having acquired the disease.

Q. Has the damage been repaired from the contraction of the disease?

A. That is questionable. In the very early stages of

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syphilis, the dose sometimes is so large that the individual has acquired, that within six weeks or two months he has an irritation of the covering of his brain, what we know as the meninges, develops an acute or subacute or acute chronic meningitis. That man for that time being is unsound mentally, he almost invariable recovers when he is given treatment. And the man who is apparently sick beyond repair, who is wholly unsound, who is a paretic and who goes to the asylum, is today treated by the implantation of malaria, the purpose being high temperature, he is allowed to be bit by a mosquito which is the carrier of the malarial parasite. He develops a temperature of a hundred and five, six, seven, eight, nine, and there is burned out of his nervous system, about as proper way as I might describe it, by this terrific temperature. There are other means of administering the treatment than by malaria, other forms of heat. These men get well, and

1570 though the treatment is fairly new—we have used it for about fifteen years—I have innumerable patients who have gotten well, have remained well for as much as ten and twelve years.

Q. Do you know the defendant, Thomas H. Robinson, Junior?

A. I do.

Q. When did you first know him?

A. I first saw him a short while after he reached the Jefferson County Jail.

The Court: This year?

The Witness: This year.

Q. About the 1st of October, 1943, would you say?

A. In the early part of October, I think it was.

Q. Did you make a physical examination of him at that time?

A. I did.

Q. Will you tell the jury what you found from your examination of him?

A. At the time I examined Thomas Robinson—

Q. Junior.

A. Junior—Thomas H. Robinson, Jr.—he was in what appeared to me to be splendid physical health. His body

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was browned as if he had been in contact with the sun, his muscles were vigorous, his skin was healthy, 1571 his reflexes were normal. He had no enlargement of any of the glands that I could palpate, the glands in his neck, and his groin. He was apparently in the possession of good health. He had a high blood count, the red blood coloring matter was high, in the 90's, his red blood cells were in excess of 4,750,000 per cubic centimeter. His urine was normal, no albumin, no casts, the specific gravity within normal bounds. His eyes were examined by me, but because I am not an eye specialist were examined for me by one of Louisville's ophthalmologists. I could see no evidence whatsoever of any markings which might have come about from syphilis. I had assured myself that he had syphilis. He shows an unmistakable scar of a primary lesion. His retina was normal. His vision, corrected by glasses, was 20-20. He had unmistakable evidence of having been the subject of tuberculosis in the upper portion of both lungs. He had no cough, no moisture. By that I mean, no rattles in his lungs that would indicate that he had tuberculosis, and yet by percussion—I mean by that (indicating)—I could find areas in his lungs that were here and there solidified.

Q. Have you examined him at any other time than that first occasion?

A. I have frequently examined him, and after he had been in Louisville about ten days or two weeks he 1572 began to cough—I should have said that his temperature was normal, both in the morning when I saw it and in the afternoon.

Q. That's the first occasion?

A. When I first saw him. On each occasion his pulse was normal, running along about 76 to 80. Before long I discovered that he had what might be called a recrudescence or relapse. He has the physical signs, did when I examined him the other evening, unquestionable physical signs of tuberculosis, active in the upper portion of his right lung, slightly active, I think, in the upper portion of his left lung. I undertook to have him X-rayed, but there was no machine in Louisville that could be transported to the jail

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and would give us a satisfactory X-ray plate, so I gave it up, but he has the physical signs of a recurrent tuberculosis, in one lung I am sure, possibly in the other lung, has a temperature of a hundred or in excess of a hundred in the late afternoon, he has a temperature that is normal or sub-normal in the early morning. Pulse is rapid. He has tuberculosis.

Q. Would it be detrimental for him to be confined—his health, I mean?

A. A man with tuberculosis should be treated for tuberculosis, preferably in an institution prepared to
 1573 treat tuberculosis, with an abundance of fresh air and sunshine, and having reached thirty-six years of age, or almost thirty-six, I think he is past thirty-six, he should make a recovery again as he did from his previous encounter.

Q. Did you obtain from him at the time of your examinations any history of his past troubles?

A. I have a very complete history of Thomas H. Robinson, Jr. and from his mother and from one of his physicians in Nashville, I would say from the time of his birth to the time of his committing of this grievous offense.

Q. Will you tell the jury what that history is?

A. This boy was born about thirty-six years, a little over thirty-six years ago, of a mother—

Mr. Brown: Aren't we getting pretty far afield on that?

The Court: Isn't the history the same thing that you are going to put in your hypothetical question?

Mr. Hogan: More or less, Your Honor.

The Court: If the doctors are going to have those questions presented to them—the jury has already had those matters before them. What the doctor can give you, of course, is only hearsay.

Q. I will ask you this, Doctor, did you endeavor to obtain first-hand information yourself of his stay in
 1574 the Central State Hospital?

A. I went to the Central State Hospital and there conferred with, I think a Commissioner of Health. I have his name in my records, who was present, together

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with one of the physicians, whose name I have in my records, and I looked over the record at the—I believe they call it the Central State Hospital, a few miles outside of Nashville. I am familiar with that record.

The Court: That record has been read to the jury, hasn't it?

Mr. Hogan: Yes.

Q. Have you seen, Dr. Solomon, that record from the Central State Hospital?

A. Yes. I discussed this record with Dr. Brackin in Nashville, and discussed it again with him last night. I am familiar with this record.

Q. Are you also familiar with that report of Dr. Brackin and the other three doctors to Judge Hart?

A. I am familiar with this record and discussed that with Dr. Brackin and with Dr. Love.

Q. You are familiar with the contents of those two documents then?

A. I am.

Q. Do those documents assist you or enable you
1575 to formulate an opinion about this defendant's mental condition?

A. Well, you couldn't undertake to formulate an opinion except that you had the antecedent record and that you could compare it with your own findings today, so that I was assisted in reaching my conclusion by this and numerous other records that were shown to me concerning Thomas H. Robinson, Jr.

Q. Doctor, I will ask you what effect the participation or rather the partaking of alcohol has upon a dementia praecox personality?

A. Well, as we all know, alcohol except in moderation has a deleterious influence on the entire body and particularly the nervous system. It would accentuate, accelerate or precipitate a dementia praecox if there was an underlying reason for it.

Q. What is a psychopath or psychopathic personality, or constitutional psychopath?

A. You are asking now a number of questions. A psychopath, the word psycho refers originally to the soul

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and has been made to include the mind, and pathology is disease, so psychopath has a diseased mind. A psychopathic personality is an individual who is to a certain extent the subject of a diseased mind, the degree or extent varying. Now your other question was?

1576 Q. Constitutional psychopath.

A. The constitutional psychopath might be best made plain by the man who is a liar and who can't help from being a liar. He is a constitutional psychopath by heredity, he has something that is an affliction that has come to him constitutionally and it stays with him for the most part throughout life, though I have known some men who were liars, who were constitutional psychopaths, I know one who was a kleptomaniac and by a gracious Providence and all kind creator, so to speak, outgrew it and came straight. As a rule, a constitutional psychopath is a constitutional psychopath from birth to death.

Q. Is that any distinguishing difference between a psychopath and a dementia praecox in that the psychopath is born with it and the dementia praecox manifests itself in the person at about the age of puberty?

A. Well, I expect a dementia praecox is born with it as a dementia praecox, goes along until the age of adolescence and then something happens to topple him over, though there is a vast difference between the dementia praecox as we see them by the hundreds and thousands, and the constitutional psychopath. The degree is tremendously different between a dementia praecox and a constitutional psychopath.

1577 Q. Is there any distinguishing difference between a psychopathic personality and a constitutional psychopath?

A. I think there is. The psychopathic personality becomes such as a result sometimes of great strain. A mother becomes psychopathic, laboring under tremendous strain, with a husband or a child, or a sister, or someone near to them. We are getting as a result of this war nervous systems that are breaking down because of what we are hearing over the radio and reading in the newspapers. Recovery takes place for the most part from such condi-

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tions when the strain is released.

Q. Is a psychopathic personality or constitutional psychopath an insane person?

A. They are certainly insane. While they may be labeled as a psychopath, whenever you apply the label of psychopath you mean unsound mind and lunatic.

Q. Dr. Solomon, I want to ask you this question. Have you made any arrangements with the defendant, Thomas H. Robinson, for the payment of your fee for any services in this connection?

A. None other than to say to him that under no circumstance would I accept a fee from him.

Mr. Brown: Your Honor, I am going to object to that because a motion was made to pay this witness a fee on behalf of the defendant.

The Court: I think the jury should be instructed
 1578 that defendant's counsel made a motion that the fee of this witness as an expert witness be paid by the Government and that motion was sustained.

Mr. Hogan: I wanted specifically to show that, Your Honor, that the Government is going to pay Dr. Solomon.

The Court: On the defendant's motion because the defendant claims to be a pauper.

Mr. Hogan: And I think along that line the jury should be instructed that the defendant has been permitted on his motion to proceed in forma pauperis.

The Court: Yes. The defendant made an oath that he was a pauper and asked to proceed in this case in forma pauperis, which motion was granted, and following that motion another motion was made by the defendant's counsel that the fees of the medical witnesses be paid by the Government, which motion was sustained.

Mr. Hogan: Now I think we are ready for that long question. Did you want to ask Dr. Solomon anything before we go into that?

Mr. Brown: No. I think I will conclude my examination when you conclude yours.

Mr. Hogan: All right.

The Court: You can probably get that question in just about lunch time, I guess.

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1579 Mr. Hogan: I think so.

The Court: All right. Bring Dr. Crice in.

(Dr. Crice was thereupon called into the court room.)

Q. Addressing my question now, which will be a hypothetical question, to you, Dr. Crice, and to you, Dr. Solomon, that hypothetical question is as follows:

The Court: Probably I should explain to the jury first, with reference to this hypothetical question, that for the purposes of the question certain facts are assumed by the attorney asking the question. Those facts, some of them, at least, may be in dispute in this case or in this trial, and you are not to assume yourself, in hearing this question asked, that those facts have been established. Whether or not those facts are established is one of the questions for you to decide when you consider your verdict, but the question will be asked on the assumption that those facts exist, and, of course, if those facts don't exist the answer might be modified to some extent. Whether or not the facts exist will be something for you to determine in considering your verdict.

Q. (Continuing) Assuming that Thomas H. Robinson, Junior, was born May 5th, 1907; that he was conceived at the time his father was a heavy drinker; assuming that after his coming into this world he grew along as an

1580 apparently normal child, and that he attended Ross School, which was a grade school, and that he attended other primary or grammar schools, and completed his grammar school course; that at about the age of eleven he was kicked by a mule or horse under his right eye, upon a bone of his face or head under his right eye, which damaged him considerably and caused him to be unconscious for sometime, and that it damaged the bony structure of that particular involved area of the face; and that when he was about fourteen years of age he had malaria in a very aggravated form, and he had that malaria for some weeks, and that rather heavy doses of quinine intermuscularly were considered necessary for the alleviation of that trouble, together with quinine given orally or by way of mouth; that following that time he contracted tuberculosis and had tuberculosis, and that he was then about the age of fifteen,

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and that he was placed in a tuberculosis sanitarium where he remained something less than a year; that during that period of time he was out of school and missed his studies, and that while he was in that sanitarium he had pneumonia in a very bad form, and that he had following that pleurisy in an aggravated form; that after his stay in that sanitarium he apparently made a recovery, and that he by reason of having lost time from his studies and placed in a school known as the Wallace Preparatory School, where

- 1581 he attempted to make good grades and make up time that he had lost by reason of his illness, and that he apparently succeeded in that preparatory school and did make fairly good grades, or some high grades, in his scholastic work at that school; and that he did not finish that school, lacking one subject, and that he later went to Vanderbilt University where he pursued a law course, and that he while at Vanderbilt, which was about a period of three years, two and a half years, was a member of two fraternal societies, a legal fraternity and another fraternity; that he was well liked, had a host of friends, went among the best social circles and crowds of Nashville, Tennessee; that he had a pleasing personality and went to dances, and he was a Boy Scout in his early days; that he attended the Presbyterian Church with regularity, and participated in its religious and social functions, such as Christian Endeavor Society meetings and picnics given by or for the church or by the members thereof; that he attended Bible classes of that church regularly; that he was interested in his church and in his Bible classes, and in his church affairs; that his father was a teacher or deacon in the church, I believe; and that during his life up until that time, with the exception of these maladies that had overcome him, his life had been an apparently normal life, and that while in Vanderbilt University he associated himself with a young woman and that she preferred a charge against him of carnal knowledge of her while she was under the age of consent, and that she charged him with being the father of her unborn child and had a warrant or indictment taken out for his arrest, and that he was placed under arrest by that warrant made by

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the girl in question and members of the authorities and members of her family and was forced to marry this girl; that within a few days, within a week, I believe, following this forced marriage a child was born to this woman; and assuming that it later developed that the girl in question admitted by writing to some other man that he, this other man was the father of that child and not Thomas H. Robinson Jr., and that Thomas H. Robinson Jr. filed a proceeding in the Davidson County Circuit Court to divorce this woman and to annul the marriage; and that during that proceeding it was developed that this woman in question had falsely accused Thomas H. Robinson Jr. of the parentage of that child, and that he was divorced from that woman; and that following that incident with reference to that forced marriage he was ostracized from society, his friends, male and female; that, although he continued in his law studies in Vanderbilt University, one of the teachers in the domestic relations class occasionally and frequently would refer to the defendant Thomas H. Robinson Jr. and his domestic relations incident, referring of course to the forced marriage; and that the forced marriage, together with being ostracized by society and his fellow men and fellow women and fraternity brothers, his acquaintances and associates in Nashville, Tennessee, and in the community in which he lived; and that his personality changed considerably, that whereas he was friendly and amiable and well liked, that he became morose and stayed to himself; that he turned upon his mother and father and assumed the idea that they were mistreating him; that they were against him; and that they were constantly correcting him; that he was then given to periods of enrage ment or tantrums; and that on occasions he would become so angry and his personality would change to such an extent that there would appear in his eyes a crazy or insane stare, noticeably so; and that upon one occasion he slapped his mother in a period of enrage ment; that he was chided by his father for so doing; that his father slapped him in return for the conduct he had displayed toward his mother and that Robinson got a pistol and threatened to shoot his father and that his

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mother stepped between them and intervened and prevented that happening; that he then later or for a second time married Mrs. Frances Althausser who became Mrs. Frances Robinson; that his life with his second wife was stormy or hectic, not because of any particular thing that his second wife did but because of this defendant's attitude and his engaging in these mad spells; assuming that on one occasion he tore into shreds his father's shirt and that on another occasion he became enraged at the actions of what he considered to be an improper action of his wife in going to the grocery store with his mother and staying a little too long; and that when his second wife came home he flew into a rage and tore the dress of his second wife into

1585 shreds; that he later got a position with the Wayne Lumber Company which he did not hold so long, and

that he was either discharged or left voluntarily; that he became dissatisfied with his home life with his second wife which was then at his mother's and father's home; that he then decided that he could get to himself and did rent an apartment for himself and his wife but that he did not have any position or any means with which to pay the rent or the necessities of life for himself or his wife; that he went to the home of a Mrs. Lamb and a Mrs. Waggoner, after having first prepared a fictitious search warrant, and went into those two homes and placed the women and the servant, or servants, or other persons in the house in another room, and told them that he was an officer of the law and that he was going to search the premises for whiskey; that there was whiskey on the place but that he did not take the whiskey but instead took jewelry and other articles of value from those two homes in question; that he took the automobile from the first home and drove it to the home of the second woman and there presented himself under the guise of an officer of the law and there took articles of jewelry and other valuables; that he took those articles and hid some of them in his own home and that he took some of

1586 them to a bank in Nashville, his home town where he was known; and that he pawned them and obtained money from them; that he took other of those valuables to pawn shops in order to secure what money he

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could upon them; that he at no time attempted to disguise himself but that he went about his home town and met the State Attorney at that time, the prosecuting attorney, and that made him highly nervous; that nevertheless he had known one or both of these women into whose home he had gone to get these valuables. Assuming that some months following his entering those homes criminal proceedings were instituted against him in the Davidson Circuit Court and that he was indicted for impersonating an officer and for robbery; and that a suggestion was made to the court by the defense that he was then insane; and that the court then had the defendant committed to the Central State Hospital for a period of two weeks for observation; and that while he was there Drs. Brackin, Farmer, Love and Johnson examined him and diagnosed his case, took a history from him and possibly his family; and that after those weeks of observation and diagnosing him they reported to the Davidson Circuit Court that they believed and thought this defendant was insane; and that he was a dementia praecox personality or person; and that he had been stranded on the rocks of puberty; that he was then taken

before the Davidson Circuit Court and a jury of 12 men impaneled to inquire into his sanity and that they did inquire into his sanity during the month of

June 1929 and after receiving evidence upon that point and being instructed by the Court, the jury then returned a verdict that the defendant, Thomas H. Robinson, Jr., the defendant in that case and the defendant in this case, was insane; and assuming further following that adjudication of Thomas H. Robinson, Jr., as an insane person, the Davidson Circuit Court of Tennessee entered an order committing him, Thomas H. Robinson Jr., to the Central State Hospital for the Insane; and that he stayed there for a period of 11 months; and that during that 11 months period he was observed and diagnosed and brought before staff meetings, of which Dr. Brackin, Dr. H. B. Brackin who has testified here in this proceeding was one of the doctors, and that their diagnosis of him was dementia praecox or schizophrenia; and that while in that institution he had ideas of reference, he had ideas that

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the people were against him and were referring to him; that he attended the church services afforded by that institution and that he had ideas that the preacher was preaching directly at him and of him; and that before his incarceration in that institution he had had similar ideas of reference; that people were speaking at him and of him and about him; and that the preacher of his own church, the Presbyterian minister, in his sermons was preaching directly to him and of him and that he quit the church and refused to go whereas formerly he had taken an active part in his church affairs; and that while he was in this Central State Hospital for the 11 months period he had ideas that his wife was going to bring him a gun and that he was going, on another occasion, to get a saw and saw his way out of there and, with the gun, manage to overpower the guard and in some way use that gun to effectuate his release; that he thought Dr. Brackin was against him; that he thought the other inmates were his inferiors, that they were dumbbells; and that he thought that he could get out of there; that he told Dr. Brackin and others that he had a job paying him \$200.00 a month waiting for him in Memphis when in fact there was no such job; that he told other doctors there that he had other jobs. Assuming that following this 11 months period there the criminal charges were filed away or nolle prossed against him which would have the effect or did have the effect that if his family had so desired, of releasing him from the criminal ward of that institution but that nevertheless after the filing away of those charges his father went before the Davidson County Court, a civil tribunal, a tribunal at that time before which criminal offenses ordinarily were not tried; that his father had an inquiry made into his sanity by the citizens of Davidson County, Tennessee; that his father made such an application and stated therein that he believed his son, Thomas H. Robinson Jr., to be insane; that on or about May 7, 1930, a jury of 12 men in the Davidson County Court was impaneled to inquire into the sanity of Thomas H. Robinson Jr., and that after hearing the evidence and being instructed upon the law, that jury, being

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the second jury constituted of 12 men, rendered a verdict or decision that Thomas H. Robinson Jr. was insane and a dangerous person to be at large upon society; that his father was then appointed to be his legal guardian and executed bond as such and his father, being desirous of having him placed where he would have some exercise and some light and where his condition might be corrected, had him placed in the Western State Hospital of Tennessee, which is an official institution located at Bolivar, Tennessee; that he stayed there some 12 weeks, and that his father then decided that he believed that he would have his son released from that institution; and that he did effect his release over the strenuous objection of Dr. Cocke, the superintendent of that institution; that his father as his legal guardian, releasing him, his son and this defendant, assumed all the responsibility to the institution for his release and that after his release the boy obtained various

positions, some of which he was unstable and unfitted for or quit for various reasons, or was discharged. Assuming that in 1931 he came to Louisville, Kentucky, and obtained a job through the assistance of his father with the Stoll Oil Company; that his father assisted his son, Thomas H. Robinson Jr., and took him to Mr. C. C. Stoll, of the Stoll Oil Company, an old acquaintance of Robinson Sr., and that Mr. C. C. Stoll had it arranged that his son would be placed as a filling station attendant at one of the Stoll filling stations, located at 2d and Broadway in Louisville, Kentucky; that his son, Thomas H. Robinson Jr., worked at that station as a station attendant for a period of six weeks and that he claimed to have become acquainted with Mrs. Alice Stoll but which fact is in dispute; that he voluntarily terminated his services with that company but that he stayed in Louisville, however, and obtained employment with an insurance company as a debit or route man; and that he became dissatisfied with that or rather it was unsatisfactory according to that position, and he severed his connection with that company following which he returned to Nashville, Tennessee; and that sometime prior to the year 1932 he became infected with syphilis; that he received treatment

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for that disease at the hands of a Dr. Gayden in Nashville, Tennessee, between May 28, 1932 and October 4, 1932; and that that treatment consisted of alternating courses of neo salvarsan intravenously and bismuth intramusculatory; and that he obtained employment at the Servel Company at Evansville for a period of one day, the period of which is in dispute it being claimed that it was 11 days; that he obtained employment at the Du Pont Company plant outside of Nashville and that his foreman was named John Ward; and that when he made application to this Du Pont Company he omitted answering a question correctly as to whether or not he had or not been insane and to that question he answered "no" or gave a negative answer; and that while there he became acquainted and associated with a young woman or probably two young women and that one of them that he had claimed to have loaned some money on a ring or a diamond and that she did not redeem it and that he later sold it to get back the money that he had claimed he had put into it but that is or will be in dispute; and that following that criminal charge was placed by this young woman against him and that he went to court and faced that young woman and proved by the records of the Du Pont Company that he was at work at the Du Pont Company on the time specified by this complaining witness and could not have done the acts charged by this person; that following that the Du Pont Company ascertained that he had falsely made an answer to the question of whether he had been insane and discharged him; and that he was not able to again obtain employment at that plant and that he

1591 did not do so; and that another young woman, an acquaintance of this first one, placed a charge against him of taking from her some \$8.00 and that the officers of the law came to his home and he sensed that they were going to take him upon what he thought or knew to be a false charge and that he jumped out the window and left home and went to Chicago; that later this charge of taking this \$8.00 was dropped against him; that he has never been convicted of a felony or even a misdemeanor for that matter; that while he was in Chicago he worked in

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South Bend, Indiana, for a while as a janitor in an apartment there; also that he worked in Chicago; that during that time his life with his wife was hectic or stormy; that he rented an automobile from the Saunders U-Drive-It system in Chicago and was not able to furnish satisfactory financial reference and gave a fictitious or assumed name of John Ward, a name similar to or the same name of the foreman under whom he had worked at the Du Pont plant; and that he was able to sell Mr. Saunders, the owner and manager of this Saunders U-Drive-It system, of his financial ability; and that he obtained this Ford automobile, drove it to Indianapolis, Indiana, did not return it, kept it over its 18-hour period of time; rented an apartment in Indianapolis, Indiana; had his wife with him a part or most of the time there at Indianapolis; that he had previously purchased a typewriter in Louisville and that on that typewriter he had purchased in Louisville he wrote out a ransom note in words, figures and phrases to follow and before writing the ransom note, however, he had made an endeavor over a long period of time to obtain employment; that he had asked Mr. C. C. Stoll to reemploy him at the Stoll Oil Company in Louisville, and that Mr. Stoll refused to do so, stating, I believe, as a reason that it was their policy not to rehire persons who had voluntarily left their services; and that he at that time did or at some other time procure from Mr. C. C. Stoll a letter of recommendation which in itself was a very good letter of recommendation in which there was nothing to show that Mr. C. C. Stoll had any idea of persecuting this boy or any idea of keeping him from getting a job; that nevertheless in the attempt of Thomas H. Robinson Jr. to get various positions he was told or believed it in his mind that Mr. Stoll was blocking his efforts and that Mr. C. C. Stoll was always, in his mind, following him around to prevent him from getting a job and that preyed upon his already unstable mind and that he believed himself to be the reincarnation of Patrick Henry and that, without any idea of revenge, however, he was inspired to take action for the sake of his country and for the sake of the working man that it would be an act of patriotism to have

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1594 Stoll part with part of his money; that this idea grew and grew in this defendant's mind until it became an obsession with him; and that he then prepared a ransom note in this apartment as I have stated before in words, figures and phrases as follows:

The Court (Interrupting) Now, gentlemen, it is going to take some 15 minutes to read that ransom note, I expect, and this is probably a good time to suspend and we can take that up after lunch.

Mr. Brown: Since the jury has heard it two or three times, why not let it be submitted to the doctors and let it be considered as read into the record?

The Court: Dr. Solomon and Dr. Crice, you both, I expect, have read the ransom note?

Dr. Solomon: I have.

Dr. Crice: I have.

The Court: Then the ransom note can be considered as read. Both of the witnesses have read it and the jury has heard it and there is no use to repeat it again. You will take into consideration in this question the language and words of this ransom note.

Mr. Hogan: Now do you want me to go ahead?

The Court: Yes, I think that you can finish shortly if you leave out reading the ransom note.

Q. Assuming, further, that following the preparation of this ransom note by this defendant, he drove in
1595 this automobile that he had obtained in Chicago to Louisville, Kentucky, with the idea of carrying out his ideas as to Mr. C. C. Stoll, as heretofore stated; that he got here sometime during October 8, 1934 and that sometime during that day he went to the home of C. C. Stoll here in Louisville with the idea of carrying out his own ideas as to what should be done with C. C. Stoll and in order to gain admittance to the C. C. Stoll home he assumed the guise or role of a telephone representative or repairman, and that he was met at the C. C. Stoll home by the maid and admitted; that he made a pretense of examining the telephone for trouble; that he did not see in that house C. C. Stoll or Mrs. C. C. Stoll and left without any incidents happening other than that just mentioned;

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that he went to the home of Mr. George Stoll, a son of Mr. C. C. Stoll, and that he was met at the door by the nine-year-old daughter of Mr. George Stoll and Mrs. Stoll of that household; and that he assumed the same role of telephone repairman and went upstairs and presumed to examine the phone in that residence for trouble but left without any untoward incident happening there; that he did not there see Mr. C. C. Stoll; that he stayed in Louisville and was here in Louisville on October 10, 1934 and decided that he would go out to the home of Berry Stoll, he having previously worked for Berry Stoll or for

1596 a company with which Berry Stoll had some connection as an officer; and that he did not recall or understand then how to get to the Berry Stoll home on the Lime Kiln Road in Jefferson County and stopped at a garage operated by a Mr. Kottke on Bardstown Road in Louisville, and made inquiry as to directions and there he received directions as to how to get to the Berry V. Stoll home; that he went to the Berry V. Stoll home; and that he was met by the maid and that he was there some hour and a half; that he then pretended to be a telephone repairman and pretended to be examining the telephones; that he made certain inquiry there as to who was in the house or about the premises and that he inquired about an extension phone and that he was told by the maid that it was in the bed room of Mrs. Alice Stoll; that the maid then inquired of Mrs. Alice Stoll whether or not this supposed telephone repairman might investigate and check the phone in her bedroom and that she consented to move from her own bed room to the guest room, crossing the hall, and that she did that; and assuming that Mrs. Alice Stoll heard the voice of this presumed telephone man on the first floor of the Stoll residence and that this defendant went upstairs under the pretense of examining the extension phone in Mrs. Alice Stoll's bed room but instead he went into the guest room, either immediately ac-

1597 companied by the maid or sometime thereafter or preceded by the maid; that fact is somewhat in dispute; and that there he came face to face with Mrs. Alice Stoll and she said, "What are you doing here?" to which

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this defendant responded, "I am here to kidnap you" or "I am going to kidnap you," to which there was response on the part of Mrs. Alice Stoll that "I will give you a check" or "I will write you a check," to which the defendant responded that he did not want or would accept the check; and that upon being advised that Mr. Berry Stoll was about due, that he made some statement that he would kill Berry Stoll, but that is in direct dispute; and that Mrs. Stoll, after she claimed she knew he was going to carry out his intentions, was agreeable to accompany this defendant instead of her husband, which is also in dispute; and that he and Mrs. Alice Stoll talked or got into an argument and that it is claimed he then took from his pocket a lead pipe and hit Mrs. Stoll over the head with it which did not draw any blood at that time, and that is likewise in dispute; that he pretended to trust Mrs. Stoll and laid his gun upon some furniture there, but that is in dispute and the fact of his even having a gun is in dispute on that particular occasion at that time; that Mrs. Stoll made a grab for this gun, or the gun that it is claimed was present on this occasion; and that this defendant hit her for the second time over the head with this lead pipe and that that caused blood to flow and that she sat upon the bed and two pools of blood from the wound, or claimed wound, in the head was present but those facts about the hitting on the head and the blood are very much in dispute; and that the maid was trussed up and bound feet and hands and probably gagged; and that Mrs. Stoll was gagged, which is also in dispute, but that her feet were not immediately bound; that Mrs. Alice Stoll then accompanied the defendant from that guest room down the stairs and out into this automobile that this defendant had obtained in Chicago; and that before leaving he had thrown this ransom note, which was then in an envelope, either upon the bed or on the floor; and that he immediately left with Mrs. Stoll and took her to this apartment in Indianapolis, Indiana, where she either stayed or was held captive, which is a very much disputed question; and that she was held captive or could have escaped, which is also in dispute; and that certain letters were written in the

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handwriting of Mrs. Stoll but which were claimed to be at the direction of the defendant to Mr. Berry V. Stoll, her husband, and to Mrs. Douglas Potter, then a Miss Elizabeth McHenry, and another letter addressed to "Dear Mr. Intermediary," the intermediary having reference

1599 to the defendant's own father T. H. Robinson, Nashville, Tennessee, whom this defendant had designated in the ransom note as the intermediary, his own father. And assuming that a sum of money was delivered by his wife to that apartment in Indianapolis on October 16, 1934, and that some of that money, the amount of which is in dispute, was left there by the defendant; that he left the apartment and left his wife and Mrs. Stoll there together; and that he went about the country over a period of some 18 or 19 months without being disguised or in any manner attempting to disguise himself and that despite the fact that it is claimed the FBI forces were on the lookout for him, and despite the fact that he went openly about crowds, at one time to the polo grounds at which place there was a baseball contest on between two baseball teams and that there were stationed in there, either as spectators or on duty, many of the police force of New York or the borough of Manhattan, New York, whichever that polo ground is located in; and that he then associated himself at nightclubs openly without attempt to disguise, the best nightclubs at which he might have been expected to patronize with a large sum of money; that nevertheless he was not apprehended by the FBI Forces or other law enforcement authorities; that in New York or Brooklyn he registered under assumed names; and that other

1600 than using an assumed or fictitious name he did not resort to disguise; that he bought a Plymouth automobile from some dealer in or about New York; that he did on or about New Year's eve of December 1934 at a New Year's eve party became acquainted with a young woman by the name of Jean Breese and that he and this Jean Breese later lived in hotels under assumed names as man and wife; that they went across the country once or probably twice and back and there stayed in the very best hotels under an assumed name without at any time ever

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being picked up by the FBI officers or at any time attempting to disguise himself other than the assuming of the name; that he rented a rather expensive dwelling after having been taken about by a very pleasant sort of real estate woman who said that he was 100% so far as she was concerned, and that he swept her off of her feet; and that on May 11, 1936 Jean Breese made arrangements to meet the FBI Agents in Los Angeles and did meet them on that occasion; and that she told them of his whereabouts or, rather told them that if they would give her an assurance that she was not followed she would phone them at a designated hour of 4 p. m. and divulge to them his whereabouts; that she did that, and that the FBI Agents went to this Glendale home, 20 miles away from the office of the FBI, to which there was attached some 20 agents,

1601 assigned there; and that they knocked on the door, or at least one of them did, and that they there captured this defendant; and that he then had certain firearms and ammunition that could have been used for these firearms; that he was brought to Louisville by airplane by the FBI Agents, reaching here sometime May 12, 1936; that he was then taken to the Starks Building and put in the holdover of the FBI in that building; that he was constantly questioned from the time of his capture in California all during his airplane trip and during his incarceration in the Starks Building holdover; that he was not allowed to sleep or permitted to sleep but that he was fired with questions; that he was not permitted to have advice of counsel or an attorney, and did not have such advice; that he had never been restored to sanity; that he was brought into this court late in the afternoon of May 13, 1936, sometime before six p. m.; that his mother was hysterical and plead with him to plead guilty; that his father was intoxicated or had been drinking heavily and was in no condition to render him advice; and that he was not represented by counsel, and that he was brought into this court, not before His Honor, Judge Miller, but into this court and was asked how he pleaded and he uttered one word and that word was "Guilty," following which he was taken away; but prior to that time, however, he was

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1602 chained, that he was shackled and also handcuffed and heavily guarded; that he was then taken to Atlanta and placed in the penitentiary and later transferred to Leavenworth, likewise a Federal Penitentiary; and that he was then removed to Alcatraz Island, likewise a Federal Prison but termed sometimes as the torture chamber of America; that he then was there for sometime under strict discipline and that he made application for a writ of habeas corpus to the District Court of California but that was not successful; that he appealed to the Circuit Court of Appeals and was not successful; that he later went to the Supreme Court of the United States and was successful; that he was then given a hearing upon his application for a writ of habeas corpus and that after the facts were presented the Federal Court of California decided that he should be given a chance to have an attorney or, rather, decided that he was not represented by an attorney; and that that was in violation of his constitutional right and that he had been formerly adjudicated insane without having been restored to sanity legally; and that he should be given an opportunity to come into court, and be represented by counsel, and make a plea either by himself or with counsel as to whether or not he desired to plead guilty or not guilty. Assuming that he did come back here and entered a plea of not guilty and was placed upon trial and is upon trial for his life and liberty at this time. Now, with that assumption of facts I will ask you whether,

1603 in your opinion, this defendant on October 10, 1934, and before that time and after that time, some three years after that time, some six years after that time, was suffering from such a perverted and deranged condition of his mental faculties as rendered him incapable of distinguishing between right and wrong; or that he was unconscious at such times of the nature of the acts charged in the indictment while committing the same; or where, though conscious of them and able to distinguish between right and wrong and know the acts were wrong, yet his will, the governing power of his mind, was otherwise than voluntary, was completely destroyed; that his action was not subject to it but beyond his control?

Testimony of Dr. Leon L. Solomon

The Court: Now which one are you addressing your question to?

Mr. Hogan: Both of them, and I think maybe one ought to leave the court room while the other one answers.

The Court: Unless you want them to answer in turn.

Mr. Brown: They can answer in turn.

The Court: All right. Dr. Crice was on the stand first.

A. (By Dr. Crice) If I am able to speak of a 1604 hypothesis?

Q. Yes.

A. The defendant I am assuming suffered with a severe accident in his early youth—

Mr. Brown (Interrupting): Let's get the answer first.

The Court: Let's do not repeat the facts. You have heard them all given to you as assumed. On the basis of those facts, if they are assumed to be so, you may answer Mr. Hogan's question.

A. On a hypothesis I would say that the defendant had a background—

Mr. Brown (Interrupting): Your Honor, I don't believe that is responsive to the question.

Q. Did he know right from wrong at the time?

A. I am not supposed to discuss the question. I would say no, he did not.

Q. Did he have a control over his willpower, the governing power of his mind, to prevent him from doing the things which he is charged in this indictment with doing?

A. No, he did not.

Mr. Hogan: Now, do you want me to ask the other doctor before you cross-examine this witness?

Mr. Brown: Yes, that is quite all right.

1605 Q. Dr. Solomon, will you answer my hypothetical question?

A. It is my opinion that this man did not know right from wrong. It is my opinion that he did not have sufficient willpower to govern him in his ability to distinguish between right and wrong.

Q. Could he resist from doing the things that he is charged with doing in this indictment?

Testimony of Mrs. Ann Woollet

A. Assuming that many parts of this hypothesis that constitutes these hypotheses are correct, he had no ability to distinguish between right and wrong, and no ability to resist his impulses to accomplish his act.

Mr. Hogan: That is all.

The Court: The cross-examination may be continued after lunch. I expect we had better delay the afternoon session in order to give the jury plenty of time to eat lightly but not hurriedly before they come back.

We will reconvene at 2:30 p. m.

After recess the following proceedings were had:

In the judge's chambers out of the presence and out of the hearing of the jury:

The Court: Let the record show that these
 1606 questions are addressed to Mrs. Ann Woollet, one of the witnesses for the government in this case, in the chambers of the Court and in the presence of Mr. Eli Brown, District Attorney, and Mr. Robert Hogan, counsel for the defendant, outside of the presence of the jury.

MRS. ANN WOOLET was examined and testified as follows:

Direct Examination by the Court.

Q. Mrs. Woollet, you previously testified in this case for the government?

A. That is right.

Q. Last week, I believe?

A. That is right.

Q. At which time certain questions were asked you by Mr. Hogan as to certain steps which you may have taken or may not have taken about seeing a lawyer respecting any claim which you thought you might have had against the Stolls. Since then Mr. Hogan has shown in evidence here in my chambers certain statements of Mr. Joseph M. Hayse who states that at one time you did come to his office with your husband to see him, and that on another day, at night, you came to his residence on Confederate

Testimony of Mrs. Ann Woollet

1607 Place in Louisville, Kentucky, where you made a statement which was taken down by his wife and which you later signed and swore to. From the evidence which I heard the other day, both from Mr. Hayse and your husband with respect to these visits to Mr. Hayse's, I was of the opinion that the matter was one between a lawyer and a client and that, under the rule which makes such communications and such conversations privileged, you would be entitled, if you so desired, not to have divulged or told what you might have said to Mr. Hayse on any of those occasions. However, in order for Mr. Hayse not to divulge them, it would be necessary for you to indicate that you wanted to exercise that privilege and not have them told.

A. I certainly do not want them told.

Q. Or you can waive that privilege.

A. No. He took that as between client and attorney and I feel that that is something between us, and it has no bearing on this case and I do not want it brought out.

Cross-examination by Mr. Hogan.

Q. The other day you were asked the question if you had ever consulted Mr. Hayse or any other attorney about a claim?

A. That's right.

1608 Q. Were you mistaken then?

A. I didn't consult an attorney. That name didn't mean a thing to me. I have never been in his office.

Q. Did you consult Mr. Hayse in his office or not, Mrs. Woollet?

A. I consulted Mr. Hayse, but I was merely in his home.

Q. Then you knew he was a lawyer?

A. Certainly.

Q. Then you made an incorrect answer when you said you did not consult an attorney?

A. I didn't consult him. I merely went there and made a statement.

Q. You said the other day that you had not given a statement?

Testimony of Mrs. Ann Woollet

A. You said in an office and when you started out that didn't mean a thing to me.

Q. Have you ever been in Mr. Hayse's office?

A. No. I have never been in any lawyer's office in my life except on this case. I have had no occasion to.

Q. Now let's see about that. Do you know where the Republic Building is?

A. Not right offhand.

Q. It is on Fifth and Walnut, across the street from the Kentucky Hotel. Did you go to his office there?

A. I have never been up there.

Q. Then if you have never been in his office, you have never consulted him about any claim or made a statement there did you?

A. I did not.

Q. Then he was never at any time your attorney?

A. No, I wouldn't say so. I merely went to his home and gave a statement—that was every bit of it.

Q. Now, confining it to your being at his office. You did not employ him as an attorney?

A. No.

Q. You did not consult him as an attorney about this Stoll kidnapping case or anything else whatsoever?

A. No.

Q. In other words, so far as you and Joe Hayse are concerned, there has never existed between you and him the relationship of attorney and client?

A. No.

Mr. Hogan: If Your Honor please, there it is right there.

The Court: This witness is a lay person. She does not understand the meaning of lawyer and client. Did you go there with your husband?

1610 Witness: To his home.

The Court: With your husband?

Witness: That's right.

The Court: And your husband was trying to get advice in a claim against the Stolls?

Witness: That is right.

Testimony of Mrs. Ann Woollet

The Court: And any claim that you might have along with him?

Witness: That is right. He merely wanted a job.

The Court: Mr. Hayse stated this morning when he testified that they came there to consult him. I don't think this witness understands what you mean as to lawyer and client. It was Mr. Hayse's own statement that they came there to consult him about a claim against the Stolls.

Cross-examination Continued by Mr. Hogan.

Q. Did you contend at any time that you had been falsely imprisoned in the Speed home?

A. No.

Q. Did your husband, so far as you know, have that idea?

1611 A. I don't know what his ideas were.

Q. Well you did sign this statement that was produced here in court this morning?

A. I don't know that I did.

Mr. Brown: Why don't you show it to her and let her see whether or not she signed it.

A. I don't remember ever signing a statement.

Q. Now suppose you look at that statement and answer the question? (Handing statement to the witness.)

A. (After looking at signature) That is my handwriting.

The Court: Did you show her that on her direct examination?

Mr. Hogan: No, I didn't. I think I should be permitted to do that now because on page 643 she denied making the statement to anybody that Mrs. Stoll put her arms around her.

The Court: Well you have proved it already by Mr. and Mrs. Hayse, both.

Q. Do you deny making this statement?

A. I know I was in her home and gave a statement but I didn't know—

Q. (Interrupting) You remember signing something?

A. I do not remember signing anything but
1612 that is my signature.

Testimony of Mrs. Ann Woollet

Q. Well you don't put your handwriting or signature on anything if you don't know what it is, do you?

A. I suppose not.

Q. Then that recalls to you that you signed this statement?

A. I signed that, yes.

Q. In the court room the other day did you deny that you signed any statement?

A. I still don't remember it. I just see my handwriting there.

Q. Well, does that refresh your recollection?

A. No it doesn't.

Q. Or do you just don't want your recollection refreshed?

Mr. Brown: Now I am going to object to that.

A. I am not being tried in this case.

The Court: She says it is her handwriting. That is contradiction if that is what you are trying to prove here.

Mr. Hogan: That is what I am trying to prove.

Witness: I still don't remember signing it.

Mr. Hogan: I think I ought to be able to put her on and ask her if she didn't sign this or remember signing this.

1613 Mr. Brown: I will object to putting anybody else back on the stand.

Mr. Hogan: You have just brought her back.

Mr. Brown: I did not. The Court asked her to come down here.

The Court: I asked her to come down.

Mr. Brown: You have proved everything you want to prove.

The Court: What do you want to prove?

Mr. Hogan: That she signed this statement.

The Court: Well you may state to the jury that she signed it; that she would make the statement that she recognized her handwriting on the exhibit but has no independent recollection of having signed it. Is that right?

Witness: That's true. I have scratched my brain and I just can't remember signing it.

Mr. Brown: All right, Mrs. Woollet, you may be ex-

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cused.

The following proceedings were had in the presence and hearing of the jury:

The Court: Members of the Jury, this morning some testimony was introduced to you by Mr. and Mrs. Hayse relative to some statements which they claim were made orally in Mr. Hayse's office and later reduced to writing in Mr. Hayse's home by Ann Woolet, one of the witnesses who testified for the government here last week.

At the time when Mrs. Woolet testified she was asked by defense counsel whether she had made such statements and she answered either that she had not made them or did not recall making them or something to that effect.

However, at a conference which has just been held in my office with counsel for both sides present and with Mrs. Woolet present, the written exhibit which Mr. Hogan offered in evidence this morning, I believe, or at least identified, was shown to Mrs. Woolet and her signature thereon shown to her and she recognized it as her signature but Mrs. Woolet stating at the same time that she had no independent recollection of having signed it.

By agreement that statement is made to the members of the jury of that fact.

DR. LEON L. SOLOMON, was called to the stand and was examined further as follows:

Cross-examination by Mr. Brown.

Q. Dr. Solomon, you stated that you examined this defendant in October and again in November of this year, I believe?

A. Yes, sir.

Q. And upon the date of your first examination you found him in excellent physical condition?

A. Yes, sir.

Q. With reference to his mental condition, did you find him in good mental condition?

Testimony of Dr. Leon L. Solomon

A. He was wholly sound and in excellent mental condition when I examined him.

Q. Now, you stated that at some short time later you found him to be suffering from an active case of tuberculosis. Do I paraphrase your words exactly?

A. In the sense of active meaning acute tuberculosis, it is not acute today, but it was gradually making its appearance as an active tuberculosis and becoming more active as days have gone by.

Q. Now what you mean was, it wasn't an active case but it was more active than the first time you saw it?

A. He had no evidence whatsoever of tuberculosis when I first saw him.

Q. I thought you said that you could discover by some method old tissue scars?

A. Yes, he had had tuberculosis. It was what
1616 we call healed tuberculosis.

Q. You did discover the presence of old scars. Is that right?

A. He had unquestioned evidence of healed tuberculosis.

Q. Now then when you saw him the first time you saw him, when the defendant first returned from the torture chamber of America, and I am using his own words, you found him in excellent physical and mental condition?

A. Yes, sir.

Q. And since that time you have caused some test to be made upon this defendant which, in your opinion, you now find to be leading toward an active case of tuberculosis?

A. Well, I have caused no test to be made on him that would lead to such an opinion. I have made those tests myself—physical, wholly physical.

Q. Well now what did they consist of?

A. What we call auscultation. That is—

Q. (Interrupting) All right. Now what does that consist of?

A. Physical signs of tuberculosis.

Q. All right. Now don't go so fast. Auscultation. You said you made certain auscultatory tests?

Testimony of Dr. Leon L. Solomon

A. Yes.

1617 Q. All right. What is that? What kind of a test is that?

A. You either lay your ear directly on the chest or you use a stethoscope, an instrument, and attached it to your ears and listen to his breath sounds.

Q. What did you do?

A. Well nowadays we rarely lay our ear on the chest. I used my stethoscope, which—

Q. (Interrupting) Well I have seen a stethoscope so you don't have to tell me about it. You used a stethoscope by placing it to his chest?

A. Placing this stethoscope to his chest, and to my ears.

Q. All right. Now what else did you do?

A. I used the percussion evidence.

Q. All right?

A. I listened to his voice sounds.

Q. With your ears, you mean?

A. With my ears—I had him speak and I had him cough.

Q. All right. What else did you do?

A. I laid my hands on his chest and got what we call firmities, the movement of his chest. And there is evidence of consolidation.

Q. All right. What else did you do?

1618 A. I determined that he has a beginning cavity in his lung—

Q. (Interrupting) Don't tell me what he has—just what you see.

A. That is obtained through auscultation.

Q. Well now, you have already talked about auscultation.

A. No, I was auscultating his breath sounds, and now I am auscultating to see what happens when he talks, and when he breathes, and when he coughs.

Q. What else did you do, Doctor?

A. That is all that is necessary.

Q. Well it isn't a question of being necessary but I asked you what else did you do?

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A. That's all.

Q. No sputum test?

A. He has almost no sputum. He coughed and he—

Q. (Interrupting) Just answer my question. I said, did you or did you not make a sputum test?

A. There is no sputum to be had—practically none.

The Court: Now, just a minute. You can answer that question yes or no, and then give your explanation.

Mr. Brown wants a yes or no answer. Did you make
1619 a sputum test?

Witness: I made no sputum test.

Q. All right. Now you can explain why you did not make a sputum test?

A. Because there is no sputum. It is a dry cough and unproductive and produces no sputum.

Q. Did you do anything else?

A. No.

Q. That's all you did?

A. That's all I did.

Q. Now then suppose you had a heavy cold, Doctor, and you did those same things, what would you find out?

A. You would get evidence of a bronchial cough, wholly different from the auditory signs in the percussion method where there is consolidation.

Q. Suppose you didn't have any cough?

A. Had no cough?

Q. Suppose you just had a cold without a cough—that is, a chest cold without a cough?

A. You can't very well have a chest cold—

Q. (Interrupting) Well, whether you can or not, just suppose, if it is medically possible?

A. It is not medically possible to have a chest cold without a cough.

1620 Q. Not medically possible—

A. (Interrupting) No.

Q. (Continuing) To have a chest cold without a cough?

A. No. It is not possible to have a chest cold without a cough.

Q. Now, Doctor, are you a tuberculosis expert? Have you specialized in tuberculosis?

Testimony of Dr. Leon L. Solomon

A. Well, for fifty years I have listened to people's chests, and I consider myself sufficiently expert—I dislike the use of the word. I consider myself sufficiently familiar with sounds of the chest to constitute myself as an expert in a pulmonary condition, whether it be tubercular or bronchial or pneumonic or pleuritic, or whatever it may be.

Q. Or syphilitic?

A. A syphilitic tumor of the chest would give you the evidence of some consolidation; then you would verify that by an x-ray.

Q. Now, Doctor, have there been any advances in medical science in the last ten years?

A. Oh, I think there is an advance of practically—

Q. (Interrupting) Every day?

1621 A. Well, maybe not every day.

Q. Most days?

The Court: Every year?

A. At least every year.

Q. Now, have you ever made a diagnosis of active tuberculosis without clinical readings, without a sputum test—

A. (Interrupting) I beg your pardon, but I didn't get the first one.

Q. Without clinical readings—that is, thermometer readings, without a sputum test, or without an x-ray?

A. Mr. District Attorney, I had my education before they had any x-rays—before there was an x-ray.

Q. All right, you can answer that question yes or no and then you can tell me about your education.

A. I have distinctly made such a diagnosis, and every doctor has who was born 50 years ago.

Q. In the last ten years have you made a diagnosis of active tuberculosis where you have taken no thermometer readings—

A. (Interrupting) I beg your pardon, I repeatedly referred this morning and said to you that there were thermometer readings; that he had a sub-normal—

Q. (Interrupting) That's what I asked—

1622

A. (Continuing) That he had a sub-normal

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temperature in the morning and an afternoon rise in temperature.

Q. That is what I asked you if you had done, and you told me you had not—you told me four things you had done and mentioned nothing else. Now, did you take a thermometer reading?

A. I so stated this morning, that he had a temperature of over 100—

Q. (Interrupting) I am not talking about this morning. I am talking about now. Did you take a thermometer reading?

A. I did, sir.

Q. Have you the thermometer readings with you?

A. Yes.

Q. Are they there?

A. In this record.

Q. Where are the thermometer readings?

A. They are in my office.

Q. Can you call your secretary and have a chart sent over here showing the daily temperature of this man?

A. I couldn't possibly call her on Thursday. She is out of her office on Thursday.

Q. Out of her office?

A. From twelve o'clock noon. But I tell you
1623 that he had a 100 and more in the afternoon, and below normal in the morning.

Q. When did you first examine him?

A. I would say about three weeks ago, and discovered that.

Q. That would be about November 15th?

A. It was the day before I went to Nashville, and that was the 14th day of November.

Q. Then it was the 13th?

A. Yes.

Q. All right, what was his morning temperature on the 13th?

A. It was sub-normal.

Q. In the afternoon?

A. It was over 100—his late afternoon temperature; it was in excess of 100.

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Q. Did you prepare the chart yourself? Did you keep the chart?

A. They are all dictated by my young lady secretary—sometimes over the telephone and sometimes in the office.

Q. Well in this case, you were over at the jail when you examined the defendant?

A. They were given to her when I got back from the jail.

1624 Q. Now, each day from November 13th until what day did you take those thermometer readings?

A. I think I last saw this gentleman on Sunday—this past Sunday, at about 5 o'clock in the afternoon.

Q. And so your thermometer readings extend from November 13, 1943, to December 5, 1943?

A. If that was Sunday.

Q. You had no x-ray made?

A. I undertook to have one and couldn't have it made.

Q. You had no x-ray?

A. There was no x-ray made.

Q. Did you contact the Dick X-ray Company to have an x-ray taken to the jail?

A. I went to Dr. Fugate's office and was told that he had the best x-ray equipment in the—that might be transported; and Dr. Fugate said to me, "My x-ray is not sufficient and if I plug it in to the wires at the jail I haven't sufficient wattage to get any soft structures."

Q. Did you go to the Dick X-ray Company to get an x-ray to be transported to the jail?

A. No.

Q. You did not?

A. No.

Q. You know the Dick X-ray people here in **1625** Louisville?

A. Intimately well.

Q. Now, Doctor, in your answer to the hypothetical question this morning, you assumed facts to be true—am I correct about that? In answer to the hypothetical question?

A. Yes, sir, assuming those facts to be true.

Q. All right. Now did you assume that Mrs. Stoll was

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kidnapped or did you assume that she went voluntarily?

A. I assumed both, that she was kidnapped and that she voluntarily went.

Q. Did you assume that she was hit over the head or that she was not hit over the head?

A. I assumed that she was hit over the head because she had—so I was told—

Q. (Interrupting) Now it is not what you were told.

A. I assumed that she had.

Q. Been hit over the head?

A. I assumed that she had.

Q. By this defendant?

A. I presume by this defendant.

Q. I am not presuming. I am asking you?

1626 A. Well—

Q. (Interrupting) I am asking you to presume. Did you presume that she was hit over the head by this defendant?

A. I couldn't assume that. I could only assume that she had an injury on the back of her head and on the forehead.

Q. Well, Doctor, you were examining this defendant, or answering the hypothetical question to testify about this defendant, were you not?

A. I will assume, if you desire me to, that she was hit over the head by this defendant.

Q. But you said you didn't assume that?

A. Well, she was and she was not—she had an injury.

Q. You mean you can assume that the facts are true, and you can assume that the facts are not true, and you can assume that the facts may be true, and your answer would be the same?

A. As regards this man.

Q. That is, you can assume that the facts are true, and you can assume that the facts may be true, and you can assume that the facts are not true, and the answer regarding this defendant would be the same?

1627 A. With respect to that question, I think they are not material as to whether he hit her or not.

Q. Now, you have testified at some length about this

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so-called forced marriage. You say you gained knowledge of that?

A. Of the what marriage?

Q. Of the forced marriage? In 1927?

A. Forced marriage. Yes.

Q. Did you learn the facts surrounding that marriage?

A. Well as they were outlined to me by the defendant himself and by his mother and by an attorney who represented the defendant, by the—

Q. (Interrupting) Who was the attorney?

A. Mr. Ross, as I understand.

Q. Monte Ross. All right, go ahead.

A. By the records which were available at the Lakeland Asylum.

Q. Lakeland Asylum?

A. No, the Central Asylum, they call it. And by the affidavit of the physicians who refer to it.

Q. Did you examine the court records?

A. You mean did I go to court?

Q. Did you examine the court records?

1628 A. No I did not—I was there on a Sunday; Saturday night and Sunday.

Q. Have you had displayed to you by Mr. Monte Ross, or by Mr. Hogan, a certified copy of the court records pertaining to this forced marriage?

A. Yes.

Q. You have seen that?

A. Yes.

Q. Let's see if our records agree. Will you examine that and see if that is the court record (handing record to the witness.)

A. Yes.

Q. Now doctor, did you assume it was his child or it was not his child?

A. I beg your pardon—it was or was not what?

Q. This defendant's child as a result, or born after that marriage?

A. I didn't get one word in your question. Will you repeat it?

Q. Did you assume that it was the child of this defend-

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ant and his wife or that it was not his child?

A. You are speaking of the forced marriage?

Q. Yes?

A. I assumed this was not his child.

Q. And you assumed that she was a chaste
1629 woman or was not a chaste woman?

A. I assumed that she was a promiscuous woman who had had illicit intercourse with a number of men.

Q. Did you assume that this defendant was not allowed to consult with his father or with his attorney before he went through with the marriage ceremony, or did you assume that he went through with the marriage ceremony voluntarily?

A. I understood it was a shotgun marriage.

Q. And your information was obtained from this defendant, from members of his family, and from Mr. Monte Ross, plus certain information on the records of the Central State Hospital which likewise was obtained from this defendant, from members of his family or from his attorney?

A. Plus information that was obtained from two of his boyhood friends and from Dr. Gayden—I say, I think, seven or eight people on Sunday.

Q. Now, Doctor, you have had occasion to examine many people or few people who have been convicted of crime or who are awaiting trial on charges of crime?

A. I have not examined a great many people who have been guilty of crime or who were awaiting charges—rather few.

Q. May I ask you if you know what I mean by the phrase “modus operandi”—

1630 A. Yes I know what that means.

Q. I will ask you if in criminology, modus operandi isn't the science of detecting the perpetrator of a crime by studying the methods that that man has used before in committing prior crimes?

A. Well I don't know that I am so familiar with the legal side of it as to answer that question, but the words “modus operandi,” I understand, is as you have stated, the methods that are pursued.

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Q. Now, let's examine this record. I believe you have seen this record before, you say?

A. I presume I have.

Q. Suppose you look it over and tell us whether or not you have before I ask you about it (handing the record to the witness).

A. It looks like the same piece of paper—I mean a piece of paper that was a facsimile of what we are now referring to.

Q. Several pieces² of paper, isn't it?

A. The same piece of paper—by “piece” I mean—I am using the word “piece” in the plural.

Q. Now, Doctor—now, up to this point, Doctor, there has been omitted from the record all mention of the young woman involved in this 1927 marriage. The defendant has observed that and I have observed that, and I will ask you that so far as I am concerned you will continue to omit the reference to this young woman's name.

A. I have never used it and I will not use it; out of respect to the woman I would not use her name.

Q. Now, I will refer you to the complaint and ask you to examine certain parts of it that I refer you to, and refer you to this part at that point—

“At the time he was so arrested under said false and fraudulent charge, he was not given an opportunity to consult with his father or counsel—

Mr. Hogan (Interrupting): Now if he is going to pick out parts of the record I reserve the right to pick out certain parts of it.

The Court: Oh yes. You may show the Doctor the whole record if you want to. I understand he has read it all anyhow.

Witness: Yes.

Q. (Reading) “That the defendant furnished the money to purchase said marriage license for their marriage, and he was then carried to the office of J. R. Allen, a Justice of the Peace in Nashville, Tennessee,

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1632 on Deaderick Street, where the purported marriage ceremony was held.

"Complainant believed the statements of the said defendant and her mother and aunt to be true and relied thereon. He believed from their statements that the said defendant was a virtuous woman and that the child to be born to her was his child, and that it would not be born for about two months from the date of said ceremony.

"At the time of said ceremony he was a student in Vanderbilt University and had no independent means or income, and was not then able to take care of a wife and child. On account of the fact that said unborn child, if his, was conceived before said ceremony, he hesitated to tell his father and mother of his purported marriage, and the circumstances, thereof, at that time. After the marriage ceremony said defendant went to her home to live and he went to the home of his parents to live.

1633 "One week after said ceremony, while the young woman and the said Robinson were living separate, as aforesaid, said child was born. Robinson was very much surprised and shocked to learn of its early birth, and started an investigation to find out when said child was conceived. He found that said child was a full nine months child. He then discovered that said child, according to medical authorities, was conceived on or around April 19, 1926. The young woman did not have sexual intercourse with the said Robinson on or anywhere near said date. On further investigation he found that around that date said young woman had sexual relations with several different men other than Robinson. From the facts developed and what he already knew, that is, the date of the birth of the child and his relations with the young woman, Robinson was forced to the conclusion that the child did not belong to him, and that a gross fraud had been practiced upon him by said young woman and her mother and aunt in her presence.

"Robinson therefore charges that his consent to

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said marriage was secured and obtained by such fraud as renders said marriage fraudulent and void from the beginning; and he is advised he is entitled to avoid and annul it in this court in this proceeding."

1634 Then there is an amended and supplemental bill, in which he prays,

"For the annulment of his marriage to the young woman on the grounds of fraud—and, in the alternate prays for divorce on the ground that the young woman was pregnant with child by another person at the time of their marriage by another person without his knowledge."

Now he also goes on to say,

"Now in addition to the charges and allegations made in his original complaint, Robinson charges that shortly after said marriage, and in the month of February 1927, the said young woman called, or had called, to her home a committee from the Ku Klux Klan, for the purpose of discussing with said committee certain charges she had to make against Robinson.

"Upon said committee calling at her home, she falsely and fraudulently told said committee that Robinson had, in April 1926, come to her home in Nashville, Tennessee, and asked her to go automobile riding with him; that after he had gotten her into the car with him for the purpose of taking her for a ride, he drove her to a drug store where he purchased certain 'knock out' drugs or drops which Robinson, unknown to her, put into a harmless drink and gave her for the purpose of rendering her unconscious; that after Robinson had so give her said 'knock out' drugs or drops and thereby rendered her unconscious, he thereupon forcibly and against her will had sexual intercourse with her, and committed rape upon her body."

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Then it goes on to say:

"Said charges made against the complainant to said committee are absolutely false and groundless, and known to have been groundless and false by the young woman when she made them."

Then it is signed Thomas H. Robinson Jr., and sworn to. Now we get to the answer of the young woman.

"The young woman denies that the facts in this case justify the complainant to use her name in a double aspect, and states in fact that her name is and should be Mrs. Thomas H. Robinson Jr. because of the ceremony which was had with the consent of the young woman and Robinson. That the marriage ceremony was in good faith, the parties thereto assenting—

1636 A. (Interrupting) Pardon me, she admitted something but she made this denial?

Q. Let's see what is is. (Continuing reading:)

"The defendant admits the first paragraph of Section one of the bill, with the exception that she denies—

A. (Interrupting) My recollection is that she admitted part of it.

Q. She admitted her name and where she lived, didn't she, Doctor?

A. As I read through it she made other admissions which the Court passed upon when it annulled the marriage.

Q. You were under the impression that the marriage was annulled?

A. Nolle processed, whatever that means under the law.

Q. Well, nolle processed and annulled are very different. You say that the marriage was annulled?

A. I was using the word "nolle processed."

Q. We are not using the words nolle processed here. We haven't gotten to the words "nolle processed."

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(Reading:)

1637 "The young woman admits that at the time and place aforesaid that Robinson was placed under arrest on said warrant, but she emphatically denies that she, the young woman, approached Robinson and told him that she was about 7 months pregnant with child and that Robinson was the father of the child and that unless he married her he would be prosecuted on said charge and sent to the penitentiary thereon.

"Robinson's attention had been called to the fact that the young woman was in a state of pregnancy for which he was the cause, many months prior to the time complained of; that his attention was called by the young woman to the fact that she had yielded to him under promises of marriage and that Robinson tried to avoid same after ruining her and making it possible for her then condition of pregnancy. His attention was called to the fact that he owed this young woman, a girl of previous chaste character, and the unborn baby a name, and he was advised at that time that the baby was liable to be born at any time, certainly within a few days or a week. Knowing these facts, he consented to the marriage ceremony complained of.

1638 "It is denied that Robinson was not given an opportunity to consult with his father or counsel at the time he was placed under arrest but defendant is unable to understand why he could expect said privilege or favoritism at the hands of a sheriff. He willingly came to the court house and secured a license, after borrowing a sufficient sum for same together with a sufficient sum for the purpose of purchasing a wedding ring which he suggested they should have and which he in person bought and put upon the finger of this defendant apparently in good faith realizing the importance and sacredness of the event.

"The young woman would further aver that after the ceremony complained of he went to the home of this defendant who was then living with her mother in the city of Nashville, and there in the presence of

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numerous parties admitted that the child to be born was his, and discussed with this young woman and her mother and others as to whether or not the defendant would be taken to a hospital during her period of confinement, which Robinson then understood would be within a few days, or whether she would stay at home with her mother, which he preferred.

1639 "Robinson admitted upon that occasion that he was anxious to live with the defendant as husband and wife and manifested much affection towards her, and much interest toward the unborn babe, and even at that time discussed what they would name the child, if it be a girl, or if it be a boy. He was at that time that he was in school and was unable to support this young woman and baby as he would like to; that he was desirous of completing that year's course in law and as soon as he completed same he would take the defendant and create a home for them, and suggested that the young woman could also work and keep him.

"The foregoing facts certainly disclose that Robinson, who is an intelligent man, taking a law education, had the advantage of the marriage ceremony and had, from after same manifested the belief that he was responsible for the young woman's condition and intended to assume the entire responsibility for same, and that said action was a complete ratification of the ceremony, which he now claims to be false and
1640 a fraud practiced upon him."

Mr. Hogan: Are you reading from the defendant's cross-petition?

Mr. Brown: Yes, that's right. No, I haven't gotten to that yet. That was the answer of the defendant.

Mr. Hogan: Now those are the allegations the defendant set up.

Mr. Brown: In contradistinction to what Robinson set up.

Mr. Hogan: Her answer to his action for divorce.

Mr. Brown: That's right. Now this is the amended.

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answer and cross-bill.

Q. Now, in the amended answer, she apparently re-alleged the matter that was contained in her original answer. Now then there was a trial, was there not, Doctor, and it was submitted to a jury, was it not?

A. I think I remember that.

Q. And these facts seemed to be submitted to the jury: "The following issues of fact are submitted to the jury for its determination:

"1. Is some one other than Thomas H. Robinson Jr. the father of the child called (then the young baby's name)?"

1641 What was the answer to that?

A. "No."

Q. "2. Was the representation made by the defendant, the young woman, or by her mother or Aunt in her presence and with her approval to Thomas H. Robinson Jr. after he had been placed under arrest and shortly before the marriage, to the effect that she was a virtuous girl and chaste girl except for her sexual relations with him, false and untrue?"

And what was the answer to that?

A. "No," it says.

Q. "3. If the second interrogatory has been answered in the affirmative then did said statement mislead and deceive said Robinson into the belief he was the cause of her then pregnancy and caused him to enter into marital relations he would not otherwise have made."

Since the second interrogatory is answered in the negative, that interrogatory is not answered.

A. And I wonder why it wasn't answered when I read it. There is no answer there, yes or no. It should have been.

Q. You think so?

1642 A. I think so.

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Q. Now let's see why it isn't there. Now let's read it over again. Did you read it?

A. I listened to you as you read it.

Q. I thought you said you had seen it before.

A. I have seen it before and I wondered why there was no answer there. The word "answer" is there and there is neither yes nor no.

Q. All right, let's look and see why there is no answer there. Now this is the third interrogatory, isn't it Doctor?

A. It is the third.

Q. All right. "If the second interrogatory has been answered in the affirmative, then did—." Now the second interrogatory was answered in the negative, has it not?

A. He is accused of having taken advantage of a woman against her consent, and of a woman who is under age, and I wondered why this would be nolle prossed when there was no answer to it.

Q. We haven't nolle prossed anything yet, Doctor. That comes later in the story. Now, then, Doctor, a judgment was entered on that verdict wherein the court found that Robinson was the father of this child and that the young woman had theretofore been chaste except
1643 for her relations with him. You saw that, didn't you?

A. I remember that, yes, sir.

Q. You didn't pay much attention to the judgment of the court?

A. Indeed I did. Indeed I did. It was a part of the general picture that I had been trying to analyze because I had been appointed by this Honorable Court.

The Court: Now, just a minute. I think you are wrong there, Doctor. I never appointed you.

Witness: Well then I was told so, Your Honor, that—

The Court (Interrupting): You may have been told, but there is no court order, as I understand, that I appointed you.

Mr. Brown: It is at the request of the defendant that Dr. Solomon is here.

Witness: Your Honor, I thought the protection of this court, with all its dignity and all its majesty, was mine no

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less than those other four gentlemen whom you had appointed.

The Court: You were subpoenaed as a witness by the defendant. Don't think I appointed you.

Witness: I have not been subpoenaed, Your Honor. No subpoena has ever been served on me.

1644 The Court: Well you were asked to come here by the defendant.

Mr. Hogan: That is true. He is here for the defendant, but the government is paying for it.

The Court: Yes, but he was never appointed.

Mr. Hogan: No, he was not appointed by the Court, but there was an order entered that whatever services he performed be worth he would be paid by the United States of America.

The Court: On the motion of the defendant. I sustained that motion that his compensation be paid by the government, but I never appointed him.

Mr. Hogan: That is true. He has never been appointed by the Court.

Q. Now, then, Doctor, there was a motion on behalf of Robinson for a new trial, was there not?

A. As I remember there was.

Q. And that motion for a new trial was made by Robinson in person or by his attorney was sustained, wasn't it?

A. That is what I remember.

Q. "The cause came on to be heard before the Honorable Harry A. Church (it looks like), Chancellor of Part II of the Chancery Court of Davidson County, Tennessee, upon the pleadings on file and the whole record in this cause and from all of which the Court is pleased to find as follows:

1645 "The complainant, Thomas H. Robinson Jr., has sustained the allegations and charges made in his amended and supplemental bill, that is that the defendant, this young woman, has been guilty of such cruel and inhuman treatment or conduct toward Thomas H. Robinson Jr. as to render it unsafe or improper for him to cohabit with her as alleged in his amended and sup-

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plemental bill; that she did, subsequent to their marriage, falsely, maliciously and wilfully charge him with having committed the crime or felony of rape upon her body prior to their marriage and of forcibly having sexual intercourse with her while she was unconscious from the effects of some drug administered to her by him, said charges having been made by her since their marriage to a committee of the Ku Klux Klan for the purpose of having him mobbed or otherwise punished and mistreated by same; and in fact the complainant did not administer any drugs to her nor did he 1646 forcibly have sexual intercourse with her but all sexual relations had between the young woman and the defendant were consented to by her; that thereafter the complainant is entitled to a divorce from the said defendant on the ground of cruel and inhuman treatment as alleged in the amended and supplemental bill; that the allegations made in the cross-bill filed by the young woman and cross complaint are not sustained by the proof nor has the defendant sustained the allegations of her answer to the amended and supplemental bill of complaint.

"It is therefore ordered and adjudged and decreed by the Court:

"(a) That the bonds of matrimony heretofore subsisting by and between complainant, Thomas H. Robinson, Jr. and defendant, the young woman, be and the same are hereby absolutely and perpetually dissolved and for nothing held; and that both parties are hereby restored to all of the rights, privileges and immunities of unmarried people.

"(b) That the cross bill filed by defendant and cross complaint be and it is hereby dismissed.

1647 "(c) That from the entry of this decree, both complainant and said defendant desiring it the Court decrees that said defendant shall hereafter be known as, and go under (the young lady's name), which shall be and is hereby designated as her name after the entry of this decree, dissolving the bonds of matrimony between the parties.

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"(d) The Court does not pass upon or decide the issue of fact made in the pleadings as to the paternity of the infant defendant (naming it) but said issue of fact as to the paternity of said infant defendant is expressly reserved by the Court, and this decree shall not preclude any parties from hereafter litigating said issue.

"(e) The defendant (the young woman) is not entitled to any alimony or support from complainant.

"All questions of attorneys fees and fees of the guardian ad litem having been settled and compromised out of Court are herein adjudicated.

"The costs of this cause are adjudged against the complainant and J. G. Lackey and Carlton Loser, his sureties for the costs, for which execution may issue."

1648 Q. Then next follows the certificate of the various members of the court down there.

A. That is what I had reference to when I said it had been annulled.

Q. Well you had reference to that but it had not been annulled.

A. It is annulled in this record. According to the Court, they annulled it.

Q. All right. I will not argue with you; your mind is made up that it was annulled.

A. I think I understand the English of it.

The Court: Doctor, do you understand the difference between a divorce and an annulment?

Witness: I don't know that I do.

The Court: The judgment, I believe, rendered a judgment of divorce in that case.

Mr. Brown: Yes; there is no question about that. Your Honor.

Q. Now, did you examine the records of the Western State Hospital?

A. That's at Bolivar?

Q. Yes.

A. I did not. I did not get to Bolivar.

Q. Well now, as a matter of fact, don't you know

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1649 that at Bolivar that they found that Robinson was sane.

Mr. Hogan: No, they did not.

A. It was not my knowledge, sir. It has been brought to me that his father took him out on his own responsibility, and he was told very positively that he was a menace to society.

Q. All right. Now if you haven't examined the records, but you have been told—did Mr. Hogan tell you that?

A. I think I first heard this from Clem Huggins in 1936.

Q. Oh, Mr. Clem Huggins in 1936 told you first?

A. Yes.

Q. Has Mr. Hogan told it to you since?

A. I don't remember that I got that from Mr. Hogan.

Q. Has the defendant Robinson told you?

A. What did Robinson tell me?

Q. That he was released from the Western State Hospital on a diagnosis of sanity or a diagnosis of insanity? Which did he tell you?

A. I don't remember that I asked him that question.

Q. Well did you listen to the hypothetical question of Mr. Hogan?

A. This morning?

1650 Q. Yes?

A. Yes.

Q. Well what did you assume from Mr. Hogan's hypothetical question about his release from Bolivar, if you assumed anything from Mr. Hogan's hypothetical question?

A. I think it was made very plain in that hypothetical question that when he was released it was upon the urgent request of his father who had become his guardian, and he claimed that he had a right to take his son and that, if I remember that part of the hypothesis, in that particular instance, it had to do with the fact that the father was warned that his son was not sound and would be guilty of some depredation, or might be. The father assumed the responsibility and took him out.

Q. What did you hear about the doctors at Western? What did you hear about their diagnosis?

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A. While he was in the hospital?

Q. Yes?

A. As I say, I am not familiar with what transpired after, except as it appeared in this hypothetical question.

Q. All right. What did Mr. Hogan say about it in his hypothetical question?

A. I gathered from Mr. Hogan's question, it **1651** was exceedingly long and difficult for me to retain, but as I retained it, the father took his son out against and over the objection of the superintendent who had warned him not to take him out, and the father signed a letter of release. I think that's correct.

Q. You don't recall what Mr. Hogan told you what the diagnosis of the staff of doctors was at Western State Hospital?

A. If that was mentioned in that long hypothetical question, I didn't hear it.

Q. You did not take into consideration, now, the diagnosis of the staff of the doctors at the Western State Hospital in your answer to that hypothetical question?

A. I had to take it for granted that a father would sign—because I have been made myself—patients have been paroled to me and I had to sign a paper that I was responsible for them.

Q. You took it for granted then that at the time of his release from the Western State Hospital that he was still suffering from a psychosis, and was a menace to society and it was over the objection of the superintendent that he had been removed?

A. Yes, sir, that is my understanding.

Q. Now let's see, Doctor, about this term psychopathic personality. Now if I understand the sense of your testimony this morning, you used the term **1652** "psychopathic personality" to denote some psychosis?

A. It must be. Whenever you have the word "psychopathic" is must be psychosis.

Q. Now is that your opinion or is that the opinion of the medical text books writers?

A. That depends upon the one that you may quote. There is a difference of opinion between medical men and

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there must be between you lawyers as to what words means.

Q. Well now you didn't indicate that this morning in your direct testimony. You mean that some textbook writers and some doctors use the term "psychopathic personality" to denote a person without a psychosis, while other doctors, including yourself, use the term "psychopathic personality" to mean someone suffering from a psychosis.

A. I think I made it very plain this morning that there are times when the individual of a psychopathic personality may not be insane, but he is just as likely to be the next day. I think I said that.

Q. Now, as a matter of fact, Doctor, psychopathic personality has nothing to do with mental defect at all, has it?

A. Not necessarily because they may be quite
1653 same at all times.

Q. Now then it is a character defect, Doctor, rather than a mental defect?

A. Well you can hardly have a character defect without the mind behind it to direct it. It is a character defect.

Q. So then in your use of the word "sane" you are including both character defects and mental defects?

A. Yes, if the character is bad or if it is strange or if it is not average, it is probably the result of some mental defect.

Q. Well now did you listen to Mr. Hogan's definition that he asked you to base your hypothetical question on?

A. I did.

Q. All right. Now let's see if this is right. (Reading):

"The term 'insanity' means such perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong or unconscious at the time of the nature of the act is committed, or where, though conscious of the nature of the act and able to distinguish between right and wrong, and know that the
1654 act is wrong, yet his will, that is the governing power of his mind, has been otherwise and voluntarily so

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completely destroyed that his actions are not subject to it and are beyond his control."

Now, did you understand that?

A. I understand it.

Q. Now there is no mention of character in that at all, is there?

A. Not necessarily a mention of character, but you can't possibly avoid consideration of character as being a part of it. You can't have that and exclude character.

Q. You mean, from your definition of insanity, that you are using in answer to the hypothetical question, you include not only some mental but some character defect?

A. Well, sir, I can't conceive of a man being mentally unsound without some character defect.

Q. Well, can you assume somebody being mentally sound with a character defect?

A. I can assume a man being mentally sound and having a character defect, yes.

Q. Now then I will ask you if this isn't the generally recognized meaning of a psychopathic personality, that (reading):

1655 "Psychopathic personality is a term applied to various inadequacies and deviations in the personality structure of individuals who are neither psychotic nor feeble-minded, the defect existing particularly in the conative, emotional and characterological aspects of the personality. These aspects are not so organized and adapted to each other as to operate as a harmonious unit or to permit coordination of the individual with his environment. Since there are differences of conception as to what constitutes psychopathic deviation, and as neither its clinical characteristics nor its clinical limits are sharply defined, it is considered by many to be a meaningless designation. Although vague, too comprehensive and often loosely used it is a convenient term for certain variances, distortions and discords of personality that lie in the wide zone between mental health and mental disease."

Now isn't that the general—

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A. (Interrupting) I accept it, but it doesn't apply to this man. He is not a psychopathic personality. You ask me a question about this man that would apply to him.

Q. You think it does not apply to him?

1656 A. I don't think that at any time he has been a psychopathic personality, and if you read your words carefully, they speak of its being vague, and it is vague, because it is in a realm about which we will probably never be able to define it, except in the individual and not in a definition that applies to average.

Q. So then there is a widespread use of the word "psychopathic personality," in which there is no conation of psychosis at all. Isn't that true?

A. The author says so.

Q. I am not talking about whether the author says; I am asking you—

A. (Interrupting) This author says so, and of course there is.

Mr. Brown: That is all.

Redirect Examination by Mr. Hogan.

Q. Now, Dr. Solomon, Mr. Brown has very carefully exhibited to you for the purpose of refreshing your recollection this divorce action between Thomas H. Robinson Jr. and a certain named woman, the defendant in that case. Was it plain to you that in that action this defendant brought the suit against the named young woman?

A. I didn't quite get your question.

1657 Q. Is it plain or was it plain to you that Robinson, Junior brought that action for a divorce against the named young woman in that divorce action?

A. I think that that's plain.

Q. And it was likewise plain from his reading of the record, that this defendant, the young woman in question, had been made upon false and malicious statements. You understood that, did you not?

A. I understood that. That was in, I think, the second proceeding.

Q. And the allegations made by this named young woman defendant had not been sustained by her proof.

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That was true and correct as you understand it?

A. It was.

Q. And was it not true that the chancellor, the judge who heard the case upon the pleadings, the proof on file, oral proof, and the whole record, that Thomas H. Robinson, Jr. had sustained his charges and allegations made in his amended and supplemental bill. You understood that, did you not?

A. I did.

Q. That is, that the defendant young woman had been guilty of such cruel and inhuman treatment or conduct towards the complainant, Thomas Henry Robinson, Jr., as to render it unsafe or improper for him to cohabit

1658 with her? That's what the court decided, wasn't it?

A. That was my understanding of its decision.

Q. "That she did (meaning the defendant young woman) subsequent to their marriage, falsely, maliciously and wilfully charge him, Robinson, with having committed the crime and felony of rape upon her body prior to their marriage by forcibly having sexual intercourse with her while she was unconscious from the effects of some drug administered to her by him, said charge having been made by her since their marriage to a committee of the Ku-Klux Klan for the purpose of having him mobbed or otherwise punished and mistreated by the Ku-Klux Klan."

A. That was my understanding.

Q. "That in fact the complainant, Thomas Henry Robinson, Jr., did not administer any drug to her nor did he forcibly have sexual intercourse with her as charged by her." That's what the court rendered its opinion—that is the court's opinion?

A. That was my understanding of the reading of it.

Q. "That therefore the complainant Robinson is entitled to a divorce from said defendant on the ground of cruel and inhuman treatment as alleged in his amended and supplemental bill." That's what the court decided, was it not?

A. That's my understanding.

Q. "That the allegations made in the cross bill

1659 filed by the defendant and cross complainant young

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woman are not sustained by the proof." That was the court's decision, was it not?

A. That was my understanding.

The Court: Hasn't that all been read to the jury once?

Mr. Brown: Every bit of it.

The Court: What is the purpose of reading it the second time?

Mr. Hogan: I just wanted to show that this young woman had made false—

The Court: I mean, we don't show the jury the same thing by the same witness twice, usually. It has been shown to the jury once by this witness. Do you have to read it over again? Weren't all of those read by Mr. Brown?

Mr. Brown: Everything that I read.

Mr. Hogan: If the court says do not read it again, I will not do so.

The Court: Well, I don't see the purpose of it. I am glad to listen to reason, but outside of repetition I see nothing else to be gained by it.

Mr. Hogan: Then the hypothetical question this morning was based upon facts that this defendant now, Thomas

1660 Henry Robinson, Jr. based partly on the fact, that he had been granted a divorce from this woman who made the charge that he was the parent of her unborn child.

Q. You understood that, did you not?

A. I did.

Q. And the court gave him a clean bill of health upon that, did it not?

Mr. Brown: I object to that. The record speaks for itself.

*The Court: The record speaks for itself on that. The record has been read to the jury at least once and a half times, and I think if there is any question about what it says it can be read to the jury again in closing argument. It is not necessary to put it in evidence again.

Recross-examination by Mr. Brown.

Q. Doctor, in this record, Robinson paid all the costs, didn't he?

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A. I didn't understand—I paid no particular attention to that, who paid the costs. I remember—

Q. "The costs of this cause are adjudged against complainant and J. G. Lackey and Carlton Loser, his sureties, for the costs." This young man paid all the costs.

Mr. Hogan: Wait a minute. Let's see about 1661 that. As I understood it when you read it, there was something in there that the costs were paid by agreement. Did you understand that when Mr. Brown first interrogated you?

Mr. Brown: No, sir, I didn't say that.

Mr. Hogan: Doesn't the record say that?

Mr. Brown: No, sir. "All questions of attorneys fees and fees of the guardian ad litem having been settled and compromised out of court are herein adjudicated." And the next paragraph, "The costs of this cause are adjudged against complainant and J. G. Lackey and Carlton Loser, his securities for the costs, for which execution may issue."

Mr. Hogan: What about the compromise and settlement, what does that say?

Mr. Brown: "All questions of attorneys fees and fees of the guardian ad litem, having been settled and compromised out of court, are herein adjudicated."

Mr. Hogan: Now, Doctor, do you know anything about the procedure in courts as to who usually—against whom usually the costs are assessed?

Mr. Brown: I think that's a legal question for the judge, rather than a question for the doctor.

The Witness: I wouldn't know about it.

Mr. Hogan: That's all, Doctor.

The Court: Is that all, Mr. Brown?

Mr. Brown: That's all.

1662 The Court: Before we start in with the cross-examination of the next witness, we will take a short recess.

Members of the jury, do not discuss the matter among yourselves or permit anyone to talk about it in your presence.

The marshal announced a short recess.

The court was thereafter adjourned to 9:30 a.m. the

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next morning without further evidence being heard.
 1663 Court convened at 9:30 a.m. Friday, December
 10th, 1943, pursuant to adjournment, and the fol-
 lowing proceedings were had:

DR. THOMAS J. CRICE resumed the witness-stand,
 and was examined and testified as follows:

Cross-examination by Mr. Brown.

Mr. Brown: Shall I proceed, Your Honor?

The Court: Yes, sir.

Q. Now Doctor, from what type of insanity did you
 find this defendant to be suffering?

A. Apparently he has made a recovery.

Q. He is not insane now?

A. No, sir.

Q. Have you examined him since he has been returned
 to the Jefferson County Jail?

A. Yes, sir. I examined him on November 8th, 9th and
 15th of this year.

Q. At that time you found him to be in good mental
 and physical conditions?

A. Yes, sir. He seemingly had recovered.

Q. Now, in answer to Mr. Hogan's hypothetical ques-
 tion, you answered that on the facts as were given to you,
 that person did not know right from wrong and did
 1664 not realize the legal consequences of any criminal
 act. Am I right about that?

A. Yes, sir.

Q. Now, during the entire period covered by that
 hypothetical question, in your opinion did, at any time
 during that period, this defendant know right from wrong
 or realize the consequences, legal consequences, of any
 criminal act?

A. According to the record, I would say he did not.

Q. So that is from nineteen what, to what?

A. I don't remember the exact dates. They are in the
 record.

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Q. What event happened that caused him to become deranged?

A. The defendant was a dementia praecox early.

Q. I mean, that is, of course, a conclusion—I want to know what fact first directed your attention to lead you to diagnose him as a dementia praecox?

A. Early in his career he was rather a devoted church member and he fell out with the church, he thought that the minister was preaching direct to him.

Q. Is that the fact that made you think—

A. Just a minute, please. He fell out with the minister because he was preaching directly toward him. He was antagonistic to anti-social—

1665 Q. That's not facts, is it, Doctor. That's conclusions.

Mr. Hogan: That is a fact.

A. It is in the record.

The Court: I think, Doctor, we don't want any detailed discussion at the present time. What Mr. Brown is trying to arrive at is, Mr. Hogan's question directly pointed to the date of October 10th, 1934, and Mr. Brown wants to know how much before that time did you think he was in the same condition. Now whether that's an exact date or whether that's an indefinite date, you can give us some answer to that. Was it one day, or one month, or one year, or two years, or what?

The Witness: Over a period of years.

Q. Over a period of years then, he hadn't become insane, he was gradually becoming insane?

A. Dementia praecox is always—individuals that are insane—it isn't any period of years, they gradually become worse and worse and show more manifestations as they go along.

Q. Now then, your diagnose then, in answer to the hypothetical question, is not one fact but a series of facts?

A. That's true.

1666 Q. Now then, you said he was subject to irresistible impulse. Now what do you mean by irresistible impulse?

A. Irresistible impulse is one that the individual is

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absolutely out of mental control, his objective consciousness seems to be paralyzed or ineffective in carrying out his actions.

Q. Now then, would you say that this so-called forced marriage was the result of an irresistible impulse?

A. That was a sequence. It seems to me like that was a force. He didn't care to marry the young woman. That was a situation.

Q. So it was the impulse there not to marry and some outside force was brought to bear on him to make him marry.

A. It was a situation.

Q. I will agree it was a situation, but he had no impulse to marry.

A. I wouldn't say whether he did or whether he didn't—

Q. (Interrupting) What is your best judgment on it?

A. (Continuing) —but it seems to me that he was more or less having to proceed to the marriage.

Q. So the irresistible impulse doesn't fit into that situation, does it?

1667 A. Not altogether.

Q. Well, does it fit into it at all?

A. I have just answered that question.

Q. Please answer it again.

A. It was a situation.

Q. Did the irresistible impulse fit into that situation at all?

A. Not materially, no.

Q. All right, to what extent then, if not materially?

A. The irresistible impulse in his forced marriage did not denote and it did not characterize any insane act, to my mind.

Q. Can't you answer my question, Doctor?

A. I have answered your question as I understand it.

Mr. Brown: Read the question to the doctor.

(The following question was read by the reporter:)

“To what extent then, if not materially?”

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Q. To what extent then? You said to not a material extent. I want to know to what extent.

A. Probably no extent at all. I wouldn't be able to answer that in its entirety.

Q. Haven't you answered it, to no extent at all?

A. Not in its entirety.

1668 Q. Now let's get to the robberies—the impersonation and the robberies of the jewelry of Mrs. Lamb and Mrs. Waggoner. To what extent did the irresistible impulse fit into that situation.

A. He was thoroughly insane, under a systematized delusion.

Q. Of what?

A. Persecution, being ostracized from society, being imposed upon, being interfered with in obtaining employment, had had difficulties in various schools.

Q. Let's wait now. What interference at that point had he suffered in his employment?

A. He had had trouble in his employment.

Q. What employment up to that time?

A. Various employments.

Q. Hadn't he been a student up to that point?

A. He had been a fair student, yes.

Q. That's what I am trying to find out. What employment was interfered with?

A. He had employment in various positions and could not hold his jobs.

Q. Not at that time, Doctor.

A. Just what time are you referring to?

Q. I am talking about the robberies of Mrs. Lamb and Mrs. Waggoner.

1669 A. He was under a delusion then.

Q. I am asking what employment you say he couldn't get. That's what I am directing your attention to, Doctor.

A. He did receive a number of jobs, but he was not able to—

Q. (Interrupting) I am talking about that time, Doctor, when he was a student.

A. He wasn't employed when he was a student other

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than during vacations, he may have had some little employment then.

Q. Do you know anything about that at all, when you say may have?

A. I am assuming that he may have had some little jobs during vacations.

Q. Was that contained in Mr. Hogan's hypothetical question?

A. I don't think so.

Q. Where did you get that information?

A. I had obtained it from the defendant.

Q. You are not answering a hypothetical question at all then, are you?

A. It is pretty hard to understand just what you want.

Q. I am trying to understand what you were
1670 testifying to.

A. The defendant was insane, according to the facts in the hypothetical question.

Q. Yes, but you just said you didn't take those facts into consideration when you answered that hypothetical question. You took certain other facts into consideration.

Mr. Hogan: He did not say that at all.

The Court: He said he got certain information from the defendant about his being employed in vacation time, and as I recall there was nothing in the hypothetical question to that effect, was there?

Mr. Hogan: But Mr. Brown said that he did not take into consideration the facts—

The Court: Well, probably better, he took other facts into consideration that were not contained in the hypothetical question.

Q. You did take other facts into consideration that were not contained in the hypothetical question?

A. Oh, in a minor way, yes.

Q. Now then, when next did the irresistible impulse hit him, Doctor?

A. I am not sure that I testified to any extent about irresistible impulses.

Q. Yes, sir, you did.

A. I say after he had his unconsciousness that his

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1671 acts were not controlled because of that fact.

Q. Was he suffering from any irresistible impulse?

A. No doubt he was, but just to what extent I am not able to tell you.

Q. You mean he may or he may not have been?

A. That's largely a hypothetical question.

Q. And you mean your answer was largely hypothetical, too?

A. To the hypothetical question that Mr. Hogan read, yes.

Q. Now, he was married, was he not, in 1929, first in 1927, then in 1928, I believe, Doctor. Now, you are familiar with his marriage on January 9th, 1929 to Miss Frances Althausen?

A. According to the record; yes, sir.

Q. Was he suffering from an irresistible impulse at that time?

A. I wouldn't say that his particular marriage at that time was an irresistible impulse.

Q. It was not, then.

A. I would say it was not.

Q. Now, at the time that he was employed for one day or some longer space with the Servel, Incorporated, was he suffering from any irresistible impulse at that time?

A. I would think he was unstable.

1672 Q. Is unstable and irresistible impulse the same, Doctor?

A. Not exactly. Irresistible impulse is a condition that one puts into action that he is not accountable and not responsible for.

Q. At the time that he was employed for Stoll Oil Company was he suffering from irresistible impulse?

A. I wouldn't say that that was an irresistible impulse because he was employed.

Q. At the time he was employed by the Mutual Life Insurance Company, was he suffering from any irresistible impulse?

A. I wouldn't say that was irresistible impulse.

Q. At the time he was employed by the Andrew Jack-

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son Business University for a period of several months, listing new students, was he suffering from an irresistible impulse?

A. I wouldn't say because a man has a position, he is trying to succeed in life, that it is an irresistible impulse, no.

Q. At the time he was employed by the A. B. C. Corporation, was he suffering from an irresistible impulse?

A. No. I wouldn't think those situations were irresistible impulses.

Q. At the time he was employed by the Mar-
1673 Main Apartment Hotel, was he suffering from an irresistible impulse?

A. I see nothing in the question that would indicate irresistible impulse.

The Court: I think Mr. Brown is probably meaning, was his condition of mind such that he could not—

Mr. Brown: (Interrupting) Control his actions.

The Court: (Continuing) —restrain himself from doing what some impulse led him to do at those different times.

The Witness: Yes, he had a psychosis along in those years at that time.

The Court: Doctor, he didn't ask you about a psychosis. He wanted to know whether his irresistible condition of mind existed at those different times that he has referred to, not whether he got the job as the result of an irresistible impulse, but whether that was the condition of his mind when he was employed at the Stoll Oil Company, or at the insurance company, or at the Andrew Jackson School.

The Witness: He was a boy with more or less unstable tendencies, was not directing—

The Court: Doctor, let me interrupt you again. I think Mr. Brown is entitled to an answer to his question. He didn't ask you about unstable influences. He directed your attention specifically to that condition of mind
1674 known as irresistible impulse. That's what he wants an answer to. Let's don't get off on some other
point.

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The Witness: Pardon me, Judge, but I tried to tell you that I did not believe that was an irresistible impulse when he obtained employment.

Q. Now, at the time he was charged with having committed certain robberies down in Tennessee in 1934, was that an irresistible impulse?

A. I wouldn't say those were irresistible impulses, no.

Q. If he had committed the robberies, would it have been irresistible impulse that caused him to do it?

A. It was an inability to know what was right from wrong.

Q. Was he suffering—if he had made those robberies, was he suffering from an irresistible impulse when he made those robberies?

Mr. Hogan: When?

Mr. Brown: In 1934.

Mr. Hogan: The hypothetical question, as I recall it, was not based upon the commission of the robberies, but—

Mr. Brown: (Interrupting) I asked him, if he had committed the robberies, was he suffering from an irresistible impulse.

1675 Mr. Hogan: Your basis is improper because the hypothetical question is based upon the premise that he was charged in that year with the commission, but there was no conviction, and he has never been convicted of those charges, or any other charges, for that matter.

Q. If he was not guilty of those charges, of course the impulse had nothing to do with it one way or another, did it?

A. I am not very much impressed with the irresistible impulse.

Q. At the time he jumped out of the window when the policemen were coming through the front door and he fled to Chicago, was he controlled by irresistible impulse?

A. No, I don't see the point in irresistible impulse in those situations.

Q. No point in it at all, is there, Doctor?

A. In my opinion, it is very thin.

Q. Very thin. He wasn't suffering from irresistible impulse then.

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A. I don't put a great deal of credence on irresistible impulse as you put them—as you state them.

Q. As I state them or you state them?

A. No, you.

Q. Was this defendant, in response to the hypothetical question put by Mr. Hogan, at any time suffering from an irresistible impulse?

1676 A. Under the insane delusions that he was suffering from, that is a possibility.

Q. Is an insane delusion and irresistible impulse the same, Doctor?

A. An insane delusion will create and will abet, and will influence, irresistible impulses.

The Court: Doctor, I don't want to interrupt too often, but I think that we are trying to get ahead with the examination, and Mr. Brown is directing your attention specifically to the theory of irresistible impulse, and you are continually going off into a question about insane delusions and other matters. Now, what he wanted to know was whether or not the irresistible impulse existed. Now don't get off into something else. If you think not, say so; if you think it did, say so. Let's don't travel off into some other field. Repeat the question, Mr. Brown.

Q. Was this defendant at any time suffering from an irresistible impulse?

A. I don't know.

Q. In your opinion, was he?

Mr. Hogan: When?

Mr. Brown: At any time.

Mr. Hogan: Let's confine it to the time—

Mr. Brown: From 1929 through the date of Mr. 1677 Hogan's hypothetical question, 1936.

A. No, I don't think so.

Q. As a matter of fact, irresistible impulses are rare in medicine, are they not, Doctor?

A. Rare in psychiatry.

Q. Rare in psychiatry. Rarer still in criminology, are they not?

A. I am not discussing criminology.

Q. You know something about it, though, don't you?

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A. I believe I do.

Q. Isn't it rarer still in criminology?

A. In criminology it is my individual opinion that irresistible impulses and psychiatric conditions do not exist.

Q. So in criminology, it is your opinion that there is no such thing as an irresistible impulse, is it not, Doctor?

A. I don't think so.

Q. You mean you don't think my statement is true or you don't think irresistible impulses exist?

A. I tried to answer your question. I do not believe irresistible impulses exist in criminology.

Mr. Brown: That's all, Doctor.

Redirect Examination by Mr. Hogan.

1678 Dr. Crice, when you speak of the non-existence of irresistible impulse in criminology, you associate that with a passion, do you not?

A. Well, it could be interpreted in that way.

Q. Sudden heat of passion or afraid, that's what you refer to as irresistible impulse in criminology, is it not?

A. Yes, sir.

Q. Now, what about this term "willpower", lack of control over willpower?

A. An individual must have enough normal mentality to control his willpower, to know the deed or act, he must have a consciousness of what is right and what is wrong.

Q. So when you say you don't put much credence in the term "irresistible impulse", you do not mean to say that this defendant between 1929 and 1934 had all of his willpower faculties, do you, Doctor?

A. No, sir, I did not think so.

Q. So you make the distinction between irresistible impulse and lack of control or lack of willpower, do you not?

A. There is a very definite line of demarcation between those questions.

Q. I will ask you again, if you believe, between that period of 1929 and 1934, this defendant had control over his willpower.

1679

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A. I do not.

Q. So you make that distinction between irresistible impulse and lack of control over his willpower, don't you?

A. I would like to explain. One that suffers with irresistible impulses might be entirely sane, many sane people have impulses that we wouldn't like to relate, but with a proper control of our consciousness we do not carry out or put those impulses into effect.

Q. Do you believe still, after all that you have been asked by Mr. Brown, that the defendant here between the period of 1929 and 1936, we will say, had systematized delusions?

Mr. Brown: I believe he has been all over that.

Mr. Hogan: I am asking if his opinion is still the same after you examined him. I think I can show that.

The Witness: Are you ready for the answer?

The Court: All right.

A. Yes, sir.

Q. Do you believe that between that same period, this defendant had control over his willpower or lack of control over his willpower?

A. According to the record—that I read, it was a mass of insane, wild delusions that has no place in a normal mind whatever.

Q. Then do you believe now, still, that this defendant had any control over his actions? In other words, did he have willpower sufficiently to prevent him from carrying into action these insane delusions?

A. I don't believe he did.

Recross-examination by Mr. Brown.

Q. Doctor, you mean, assuming he got, as a result of this kidnapping, a very large sum of money; assuming further that for a period of nineteen months he successfully avoided the greatest law enforcement agency in this country; assuming that he escaped capture by living under assumed names, traveling rapidly across the continent three or more times, you mean to say that man wasn't at that time in control of all of his faculties and knew exactly what he was doing?

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A. I don't think he did.

Q. You don't think he did.

A. I don't think he knew.

Q. Why, Doctor, would it have been necessary for him to leave anywhere at all?

A. He may have had some other influence, may
1681 have been a situation.

Q. You mean he might have had the situation of being confronted with a very large sum of money and he wanted to spend it.

A. The situation may have been that someone else had something to do with the traveling and expending of money.

Q. Is there any evidence in the hypothetical question that someone else had something to do with it from October—

A. (Interrupting) Not in the hypothetical question.

Q. What other information do you rely on?

Mr. Hogan: I will correct you there, there is in the hypothetical question that—

Mr. Brown: He said he didn't recall.

Mr. Hogan: (Continuing) —he associated with another person.

Mr. Brown: Just a moment. I don't want my cross-examination interrupted.

Q. (Continuing) —from October 16th, 1934, to December 31st, 1934, no one other than this defendant was directing his travels, were they, Doctor?

A. Not that I know.

Q. Well, during that time when he successfully
1682 avoided one of the greatest man-hunts in this country by masquerading under assumed names, by living in the best hotels and by spending money in a very lavish fashion, you mean at that time he was not in control of exactly what he was doing and doing what he wanted to do?

A. I don't believe he was.

Q. Now Doctor, as a matter of fact, you don't place much stock in a defense of insanity in a criminal case, do you?

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A. Oh, yes.

Q. Do you or do you not?

A. I depend on facts, yes.

Q. Well, as a general thing, you don't place much stock in the defense of insanity in a criminal case, do you?

A. I don't think that's hardly a fair question.

Q. Fair or not, would you answer it?

A. Yes. I put a great deal of stock in any truth and facts.

Q. Do you place much stock in the defense of insanity in a criminal case?

A. I do.

Q. You do?

A. Yes.

Q. Doctor, I wonder if this sounds familiar to you, I know it sounds familiar to me: "We medical men
1683 are often made another brake on the slow wheel of justice, and we abet sentimentality of the press by being asked to testify in and out of season to the lack of responsibility of the criminal. Law is an instrument for the protection of society. It is not a clinic."

A. Well, I borrowed that from Dr. Foster Kennedy of New York City.

Q. Well, you mean you borrowed it without placing much stock in it?

A. Well, it was more or less of an argument when I wrote it.

Q. You apparently assumed the same side as Dr. Kennedy, did you not?

A. I believe at that time that there was a great deal of facts in that thought. He pointed out how some courts proceed in insanity and how some courts lacked the procedure that the doctor would be able to present medical facts in cases.

Q. Doctor—

A. Just a minute, please. And how much he was obstructed in trying to convey his honest convictions to various courts.

Q. I will ask you, Doctor, if you don't believe rather thoroughly in so-called court house insanity or prison

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cramps and court room fever.

1684 A. That's one of my—they said it was one of my original breaks, I don't know whether it was or not, but that seems to be a fact in some cases.

Q. Now, the very fact that crime having been committed, in your opinion hasn't it come to be *prima facie* evidence of the insanity of the criminal?

A. I was pointing out in that article what I thought was the facts in criminology, not insanity, in criminology.

Q. Well, you used the word insanity, did you not, Doctor?

A. I don't remember.

Q. Well, let's examine it and see.

A. My reference was in criminology. If you will just wait a minute, Mr. Brown.

Q. I will call your attention to this—

Mr. Hogan: I think he has a right to explain his answer.

The Court: He can explain it after he makes it: I think he is entitled to show him what the article said.

Q. This is called, "The Psychiatrist's Responsibility to Society and the So-called Criminal Insane," and by Thomas J. Crice, M. D., Louisville.

A. Yes.

1685 Q. And let's read this: "To many people, the very fact of a crime having been committed had come to be *prima facie*"—then you have in parenthesis, court house insanity—

A. I would like to explain that; yes, sir.

Q. All-right, you can explain it.

A. Court house insanity that inspired me to write that particular paragraph was in reference to criminally insane. To illustrate, I was called upon by the Criminal Court too often some years ago to give an opinion as to whether or not an individual that had suddenly slain another individual, he had never been known to be ill of any disease, body or mind, but suddenly, the evening or the day the murderer was brought into court, he pleaded insanity. I termed that court house insanity.

Q. Now, when did this defendant first assert insanity?

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A. According to the record, he showed evidence of insanity in his early—

Q. Not evidence, but when did he first assert the defense of insanity?

A. In his early youth.

Q. As a matter of fact, Doctor, don't you know the first time that he asserted the defense of insanity was when he was charged with robbing Mrs. Lamb and Mrs.

1686 Waggoner of over six thousand dollars worth of jewelry?

Mr. Hogan: Now wait a minute. That's the only time he could assert the defense of insanity in a criminal charge:

Mr. Brown: Isn't that the first time? He said the word defense, never been charged with any other offense.

Q. Wasn't that the first time this defendant had ever claimed to be insane?

A. That was in a court action.

Q. We are talking about court house insanity, aren't we?

A. I am speaking of the insane mannerism that the defendant showed and demonstrated back in early boyhood.

Q. What?

A. Unstablensess.

Q. You mean unstablensess is—

A. Mental unstablensess.

Q. Mental unstablensess. What mental unstablensess did he show in his early boyhood?

A. He wasn't reliable.

Q. How do you know that?

A. According to the history.

Q. You say he wasn't reliable. I will ask you if he didn't go through the Ross Preparatory School, got
1687 very good grades, he went through the Wallace Preparatory School and got excellent grades with the exception of one subject, he then went to Vanderbilt and got extremely good grades?

A. If you will please allow me, many dementia praecox doesn't show sufficient evidence to the laity, and many medical men, until there is some wide-open demonstration.

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Q. You mean this robbery of Mrs. Lamb and Mrs. Waggoner was a wide-open demonstration?

A. I didn't say that.

Q. What do you mean by a wide-open demonstration?

A. One that is showing definite signs of insanity.

Q. All right, in this case, what was the wide-open demonstration?

A. On one occasion he abused and slapped his mother, and another occasion he wanted to shoot his father and would have done it if it hadn't been for his mother.

Q. When was that?

A. I don't remember the date.

Q. So you don't know whether that happened before he robbed Mrs. Waggoner or not?

A. I am not certain about the date.

Q. Now Doctor, don't you subscribe really to the theory that the so-called acquittal on account of a mental disease or a semi-mental disease is often a feeble release of wolves to prey on the people and should no longer
1688 be tolerated?

A. Not if the individual has proper diagnosis, proper trial.

Q. Let's see what you say here, Doctor: "Acquittal on account of a mental disease or semi-mental disease is often a feeble release of wolves to prey on the people and should no longer be tolerated."

A. I said that. But let me explain.

Q. Oh, surely.

A. I said semi-feeble or just purely cocked up or cooked up insane pleas over night in order to escape punishment.

Q. You didn't say semi-feeble at all, Doctor, did you? You said, "Acquittal on account of a mental disease or semi-mental disease is often a feeble"—not semi-feeble—"is often a feeble release of wolves to prey on the people and should no longer be tolerated."

A. I would like to extend the meaning of that. So many mental cases, whether they are definite, specific or whatnot, is not treated long enough in our institutions, they are turned out with no effort to look after them and

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treat them or care for them in their period of recovery.

Mr. Brown: All right, Doctor, that's all.

Redirect Examination by Mr. Hogan.

1689 Q. Now Doctor, you are influenced by the fact that two juries of the State of Tennessee, consisting of twelve men each, twenty-four men in all—

Mr. Brown: I object to that. It is purely argumentative.

Q. I ask him if he is influenced by the fact that two juries, at two different times, who had occasion to see the defendant and hear the evidence, came to the conclusion that he was insane.

A. In my opinion, that could not be disputed.

Q. It is a matter of legal record, is it not?

A. Yes.

Q. Now, he asked you about this defendant staying in the best of hotels under an assumed name. I will ask you if that doesn't itself brand him as a super-man type or a grandiose type?

A. Yes. He wanted to hide. He was a big individual, a great super-man, he had great plans in mind, with no foundation, with no sound mental reservation.

Q. That had no basis in logic, did it, Doctor, because a man of his importance to the Justice Department, who they claim were vigilant in his apprehension, would most likely look in the best of hotels for a man with a large sum of money, wouldn't they?

A. I would think so.

1690 Q. So if he had been a normal person, he wouldn't have gone right into the greatest city of the United States and put up at the best hotels, would he, Doctor?

A. That showed impoverished judgment.

Q. Even though he took on an assumed name, the great FBI with all their handwriting equipment and with all their finger-printing devices which they have displayed here, they could easily have detected him, could they not?

Mr. Brown: The answer to that is, they did not.

The Court: Of course, it is argumentative, as to

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whether they could or could not. It is a matter of opinion. The evidence shows it did not up until May, 1936, wasn't it?

Mr. Brown: That's correct.

Q. And the fact that he went to a baseball game, and to the polo grounds in New York, where there was assembled a large crowd of people, didn't that brand him as a grandiose fellow?

A. Yes. He wanted to be out in society, he wanted—he believed he was some extraordinary individual, and he wanted to be seen, probably, wanted to be heard, he wanted to carry out his insane delusions of grandeur.

Q. Had no idea of ever being apprehended, did he, Doctor?

1691 A. I don't think so.

Q. That idea was not a part of his system or make-up, was it?

A. He didn't have mental consciousness enough, mental judgment enough.

Q. When a man possessed of his normal faculties, a sound man, who had committed a crime, would he present himself in the largest crowd or a large crowd in the largest city of the United States?

A. I would think a man with a normal mind, if he was trying to secret himself, he would go into secreted places.

Q. The fact that he went across the country and went to Los Angeles, or, rather, Glendale, within twenty miles of an FBI office with twenty men, procured a rather expensive type of house, right in the arms of the law, so to speak, wouldn't that brand him as a grandiose, super-man type?

A. Yes, it would. He had great ideas then of confederates, pleasing them, doing their bidding, he thought it was just about the right thing to do, he wanted—had a wild notion of buying a ranch in California.

Mr. Brown: Beg your pardon. I don't remember anything about buying a ranch in the hypothetical question.

Q. Leave that out, if there is any objection to
1692 that, we will cut that out and relieve Mr. Brown.

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Mr. Brown: No, not to relieve me. I am wondering if the doctor is testifying from something he did not hear in court on yesterday, that's what I am wondering.

Q. I will ask you this, if after his apprehension and being placed in the federal penitentiary, and the fact that he wrote a letter to the Warden or Bureau of Prisons that he would like to see his associate that he had had on this eighteen or nineteenth month period, like to see this same associate who had turned him in to the FBI, who couldn't find him—

Mr. Brown: I don't believe there is anything in your hypothetical question about that.

Mr. Hogan: I am asking this now.

Mr. Brown: There has been nothing here that shows this defendant knew that this woman turned him in, at that time, not a thing.

Mr. Hogan: I didn't ask if he knew it. I asked Mr. Bugas and he said he did.

The Court: He said that Jean Breese did that, but there was nothing in the record, as I recall, that that information was conveyed to the defendant. If it is, you can point it out to me. I don't recall it.

Q. Well, the fact that he had been apprehended 1693 and the fact that while in prison he wrote a letter and wanted to write a book, telling others how to get a job, wouldn't that indicate a systematized delusion in that individual?

A. I would indicate his self-importance, regardless of his situation, being in a penitentiary, it would indicate his big ideas, his self-importance, and to direct them on to somebody else.

The Court: When was this book written?

Mr. Hogan: It wasn't written. It wasn't written, Your Honor, but he wanted to get out—

The Court: Didn't the defendant testify that he started to write a book on that subject, how to get a job?

Mr. Brown: Yes, he did. He said his manuscript was found out in Glendale, California?

The Court: Was it written before his capture or after

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his capture.

Mr. Hogan: No, I don't know that the book—I believe it was not written.

The Court: It was never published, I know, but didn't he testify that he started to write one.

Mr. Brown: That's what he testified.

Mr. Hogan: That's right.

The Court: Was that before he was captured 1694 or after he was captured?

Mr. Hogan: That was before he was captured.

The Court: I thought you asked the doctor about writing some kind of book when he was in the penitentiary.

Mr. Hogan: No. I asked the Doctor, the fact that he had written a letter to the Bureau of Prisons or the warden to get out of there so he could write a book on that subject, wouldn't that indicate a systematized delusion in the individual.

The Court: Was there any evidence that he wanted to get out to do that?

Mr. Hogan: Yes, sir.

The Court: That letter didn't show that, did it? Let's see the letter. Did the letter say he wanted to get out to write a book?

Mr. Brown: Here is the letter.

(Letter handed Mr. Hogan by District Attorney.)

Mr. Hogan: (Reading) "Mr. Bates: Among my effects in Glendale, California, was a manuscript of a book I was writing previous to my crime. It was, 'The getting of a job—a science.' I have studied that problem carefully and am well informed on it. I would like to do this, establish a placement bureau or at least teach a class here in the ways and means of getting a job. I believe I 1695 could help direct an inmate's efforts once he is released along certain well defined lines that would help him to get a job."

The Court: Teach classes at the institution.

Mr. Hogan: Yes.

Q. I will ask you if this same individual who wanted to teach classes and tell others how to get a job, and had miserably failed in his own field, wouldn't that indicate

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that he had some kind of delusion?

A. It would indicate a false interpretation of his ability or capabilities.

Q. Is that a form of dementia praecox?

A. It may be associated with dementia praecox, yes.

Q. Is it an insane delusion?

A. It is an idea that has no basis.

Q. Is there any—

The Court: Just a minute, I don't think the doctor answered the question. He asked you, was that an insane delusion. Now that can be answered either yes or no. You went off onto something else.

A. I wouldn't say it is an outstanding insane delusion.

Q. What is it?

A. It is more or less of a self-important idea, **1696** egotism, grandiose egotism, associated with an insane condition.

Q. Is a grandiose, self-important individual, a component part or any part of a paranoid type of dementia praecox?

A. Yes, sir.

Q. That's one of the symptoms, is it not, Doctor?

A. Yes, sir.

Q. Has anything been asked you or has anything been said by you in answer to either Mr. Brown's questions today or mine, to change your opinion of yesterday that this man was insane at the time put to you in the hypothetical question?

A. Not at all.

Q. You are still of that opinion?

A. Yes, sir.

Mr. Hogan: You may ask him.

Recross-examination by Mr. Brown.

Q. What form of dementia praecox was he suffering from, Doctor?

A. Paranoid dementia praecox.

Q. Paranoid?

A. Yes, sir.

1697 Q. You told Mr. Hogan and the jury that you

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lay considerable stress on the finding of two juries in Tennessee on insanity. Let's see whether you do that or not, Doctor. I will ask you if you didn't say this: "Justice is diverted by the absurdity of hypothetical questions. Twelve laymen cannot be expected to appraise nicely the degree of responsibility of a paranoiac or a high-grade moron"—

A. Wait a minute—

Q. Let me finish, please. (Continuing) "and the differences of opinion between lawyers and doctors, and doctors and doctors, buttressed, if not directed, by funds from opposed interests, gossiped in the corridors and wrangled in the courts, elevate crime, debase law and prostitute medicine." You said that, did you not?

A. Yes, I said that.

Mr. Brown: That's all.

Redirect Examination by Mr. Hogan.

Q. Do you have an explanation that you wanted to speak out awhile ago?

A. My idea on that question was a criminal insanity, so-called. I further tried to indicate the action of a
1698 criminal and his protection, and I further tried to indicate—to divide insanity from criminology. I further tried to say that insanity was sickness, illness, criminality was not.

Q. Now, Doctor, you have, as Mr. Brown has indicated, written some articles upon the subject of criminal insanity, have you not?

A. That particular one.

Q. And you have some pretty high ideals in your mind respecting devices to liberate persons whom you believe to be hiding behind the cloak of criminal insanity, do you not?

A. Yes. It has been my job for a good many years to try to inform the courts, particularly Criminal Court, what I believed was criminal and what I believed was insanity.

Q. Now, with that premise in mind, do you believe that this defendant in his case is hiding or trying to hide behind the cloak of criminal insanity to escape punishment at the hands of this court?

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Mr. Brown: That's purely argumentative.

The Court: I think it is argumentative. You can ask his opinion as to the condition of this defendant at the time. I think you already have.

Mr. Brown: I think he has several times.

Q. Do you have any opinion, Doctor, about this
1699 defendant's attempt, if there is an attempt, to escape punishment by resorting to the cloak or guise of criminal insanity?

A. I have found nothing in the record that would sustain that.

Q. If you thought he was trying to hide behind that to escape punishment, you wouldn't come in here and testify for him, would you?

Mr. Brown: I object to that. That's purely argumentative.

The Court: I think the question is argumentative.
Mr. Hogan.

Q. Who is paying or who is going to pay you for your services—

Mr. Brown: Mr. Hogan made a motion that the United States—

The Court: I believe that requires the same statement to this witness as it did to Dr. Solomon. The defendant filed an affidavit in this case showing that he was a pauper, he had no funds to employ a lawyer to prosecute or defend his case. He asked the court to appoint a lawyer. The lawyer also made the motion that certain doctors selected by the defense be subpoenaed as defense witnesses, and

due to the lack of funds on the part of the defendant
1700 the Government be required to pay their fees. That motion was sustained by the court because the defendant was a pauper. Whatever fee is due to the expert witnesses for the defendant will be paid by the Government as a result of that motion.

Does that correctly state the situation?

Mr. Hogan: That is correctly stated. There is one thing that I wish could be added, that the Government would include in that order the fee of the attorney which it evidently cannot do because there is no basis for it.

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Recross-examination by Mr. Brown.

Q. Now Doctor, with reference to the high ideals, you wouldn't be here. Let's examine this. This is a Kentucky Medical Journal, Volume 38, No. 1, Bowling Green, Kentucky, January, 1940. Now, I will ask you if this article under your signature, wasn't copied verbatim from an earlier article of a very famous psychiatrist in New York, Dr. Foster Kennedy—

A. I borrowed a good deal of his thoughts, yes.

Q. (Continuing) which appeared in Volume 110—

A. And I wrote—

Q. (Continuing) Just a moment—Volume 110, No. 9, February 26, 1938, in the Journal of the American Medical Association.

1701 A. I wrote to Dr. Kennedy, but I do not agree with you and the statement isn't true entirely, that I verbatim copied his report.

Q. All right. Now—

A. Wait a minute, please. I wrote to Dr. Kennedy and asked him if I would be permitted to use some of his matter in an article he wrote in the American Medical Journal. He wrote back and said, "Certainly. Nearly everything I have written in my life I had to borrow from somebody else."

Q. You have that letter, of course.

A. I may have it in my files.

Q. When you are released from here, would you produce the letter to Dr. Kennedy and the letter from Dr. Kennedy, please, sir?

A. If I can find them.

Q. I will ask you, with the exception of the first and second paragraphs, that if your article which you say in discussion is your article, is not copied verbatim from this Journal of the American Medical Association which appeared two years earlier?

A. Not verbatim, no.

Q. All right, let's start. Beginning where I have marked, you have one column of a half page and another three-quarters of a column which was not obtained from this article.

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1702 A. That is not verbatim.

Q. Now, let's see whether it is. Now I will ask you where I have marked "Start"—let's lay this over here and let some of the jury examine it.

Mr. Hogan: No. Let him check his own article.

Mr. Brown: All right, if he wants to check it first.

The Court: I suggest, Mr. Brown, you read what your article shows and see whether Dr. Crice finds any difference in his article.

Q. Where I come to a point that you don't agree, just stop me. (Reading)

"There are three protagonists in law trials in which an alleged insane person is either in the box or at the bar; the judge, the alleged insane person and the doctor. One can look at the problem from all three points of vision. There is an unseen fourth, the public, made articulate by the press.

Our forefathers fought for the recognition of individual rights; Runnymede and Magna Charta, the Bill of Rights, the struggle with the crown, the lopping off the anointed head that bore it, the continuation of that same struggle in America with the victory of the people, the Reform Bill of 1832; the present day liberties of each of us have been bought by struggle and by sacrifice. The Great War was in essence a fight for individualism against suppressing organized government, as presented by Prussia; and only the other day, ten years ago, another struggle"

A. That isn't in this article.

Q. Which one isn't in.

A. You last—

Q. "and only the other day"

A. That doesn't follow here on this page. That doesn't follow here on this page.

Q. "The Great War" doesn't follow that? Just look at it and see.

A. No, your next sentence.

Q. "bloodless but bearing even graver issues for

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civilization than did the Great War"—

A. I don't see that in here.

Q. — "was the general strike in Britain in which the whole work of labor stopped dead."

A. Where is that here?

Q. Now then, you say, "The Great War was in essence a fight for individualism against suppressing organized government."

A. Is that in Dr. Kennedy's?

1704 Q. We haven't gotten to that, doctor. "The Great War was in essence a fight for individualism against suppressing organized government," and in Dr. Foster Kennedy's article it is, "The Great War was in essence a fight for individualism against suppressing organized government." I will ask you if that isn't exactly word for word.

A. I don't see it here.

Q. "The Great War was in essence a fight for individualism against suppressing organized government."

A. Yes, I see it. Beg your pardon. Beg your pardon.

Q. (Continuing) "We have had won for us by these efforts of our forefathers, of our brothers and recently of our own, such an individual consciousness, such a respect for individual rights, that we have rather lost sight of the rights of society as a whole. We have been so glamored by our desire to safeguard the liberty of the person that we have become negligent of the safety of the mass.

Society, in short, in America has been failing to protect itself against rampant individualism, as expressed by the man of violence. During last year, there were over eleven thousand homicides in this country. That is a fifth of the total loss of the American forces sustained through both natural causes

1705 and at the hands of the enemy in nineteen months of first-class modern warfare.

The police force and the law courts are tardy instruments in the apprehension of the perpetrators of the majority of these crimes, but when they have

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been apprehended, we medical men are often made another brake on the slow wheel of justice, and we abet sentimentality of the press by being asked to testify in and out of season to the lack of responsibility of the criminal. Law is an instrument for the protection of society. It is not a clinic."

Now, to save somewhat of my voice that is left, Doctor, I will ask you, when you are excused from the stand, to compare Dr. Foster Kennedy's article, paragraph by paragraph, and your article, paragraph by paragraph, and then report back what differences there are, and if in fact they were not copied verbatim.

Mr. Brown: That's all.

The Court: Now I gather it is your contention, Mr. Brown, from where you started on, the two articles are the same, and if Dr. Crices wishes to make the contention that they are not he can take the stand later. If he doesn't ask to take the stand, it is the fair ruling, I assume, Mr. Hogan, that he does not wish to make that contention.

1706 Mr. Hogan: I think that would be fair.

The Court: You understand that.

The Witness: May I have a statement?

The Court: Yes, sir.

The Witness: This article written by Dr. Foster Kennedy was in keeping and in line with a great deal of my work, and the record doesn't show that line for line was copied. I wrote, as I said a while ago, to Dr. Foster Kennedy and asked him if I could reproduce his article, if I could reproduce it, because it was, I thought, timely and good, and one that I thought would be of some interest. He wrote back a very lovely letter and said he would be glad if I would use any of it or all of it, that the most of his writings he has had to borrow from other men.

Mr. Hogan: Now, Doctor, what is contained in those articles, even assuming that you copied word for word, or verbatim, from Dr. Kennedy, that had to do with these overnight ideas of criminal insanity, did it not, Doctor?

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The Witness: Yes, sir. I would like to further state, I don't see that I committed any wrong. I don't see that I was trying to steal some of Dr. Kennedy's thunder.

Mr. Brown: I haven't accused you of any of that.
 1707 The Witness: Let me explain, will you? I wasn't trying to steal Dr. Kennedy's thunder. I asked for permission and produced it largely as he wrote it, I had some individual lines of my own, and I had a right to do it with his permission, and to point out a criticism upon my part for writing the article, I don't think it is fair at all. I am not the writer and the student that Dr. Kennedy is, I will admit that, and I don't think he has an equal in this country.

Redirect Examination by Mr. Hogan.

Q. Now, Dr. Crice, when Mr. Brown asked you to compare those articles, I thought that he was going to change your view upon one who had twice been adjudicated by two courts as an insane person. Now is there anything in those articles that would change your mind?

A. No, sir.

Q. You still stay by your opinion as to this defendant's insanity?

A. I do.

Q. Those articles notwithstanding?

A. This article isn't written upon the insanity in question.

The Court: Gentlemen, just a minute, one of
 1708 the jurors would like to be excused.

Do not discuss the matter among yourselves, members of the jury, or with anyone.

We will take a short recess at this time.

Mr. Brown: I would like those letters of Dr. Foster Kennedy to be produced too.

The Witness: I don't have them.

The Court: I think the doctor should remain until we reconvene.

A short recess was taken, after which the hearing was reconvened, with the following proceedings:

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Redirect Examination continued by Mr. Hogan.

Q. Dr. Crice, during the recess period, have you had time to compare all the words of your article with the other doctor's article?

A. I have looked over it; yes, sir.

Q. Tell the jury now, whether your article and Dr. Kennedy's article are verbatim.

A. No, sir, it is not. Shall I read?

Q. I don't know that it is necessary to read.

The Court: Would you say, Doctor, that they are substantially verbatim, with some small differences here and there?

1709 The Witness: Judge, I couldn't say that truthfully. I have written here one half page and also quite a number of references on other pages, and in many instances I have inserted what Dr. Kennedy had said. A part of it is my original ideas, opinion, and a great deal of it, of course, was Dr. Kennedy's report which I asked and had permission to use.

The Court: Can it be accurately said that in some instances complete paragraphs are taken verbatim from Dr. Kennedy's article?

The Witness: That's true. That's true.

Q. Now, Dr. Crice, did you or not have occasion to become acquainted with Dr. Brackin who was up here?

A. Yes, sir.

Q. Have you read that report that he, and Dr. Farmer, and Dr. Johnson, and Dr. Love made to the Criminal Court in Tennessee in 1929?

A. Yes, sir, I read that article.

Q. Were you influenced in your opinion of this man's condition as of the time in question somewhat by Dr. Brackin's report and his joint report with other doctors who had occasion to see him?

A. Yes, sir. I thought the report was full and complete, and scientific.

Q. Did it contain logical deductions?

1710 A. Yes, sir. It discussed the question of insanity I thought very plainly.

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Q. And of course, that report was made up long before the indictment of this defendant in this case?

A. That's my understanding.

Recross-examination by Mr. Brown.

Q. I will ask you if, with the exception of the first five paragraphs of your article, Dr. Kennedy's article isn't copied verbatim, with the exception of the first five paragraphs of your article, you haven't copied Dr. Kennedy's article verbatim.

A. Well, that is true. I see no reason why I shouldn't use his article.

Q. I am not arguing with you. I am just asking you.

A. Why are you bearing down on that?

Q. I am not bearing down, Doctor.

A. Why are you making such a big boogaboo about nothing?

Q. You seem to have a sense of guilt.

A. This isn't guilty, writing an article.

Q. Now, I will ask you to refer to your article and ask you further if there is any place in your article
1711 that you give Dr. Foster Kennedy one line of credit?

A. No, I did not.

Q. And I will further ask you if on page 32 of the Kentucky Medical Journal, when you are discussing this article, you don't say this:

"In regard to the jury system, I think it is most obsolete, old-fashioned, and worn-out. The jurors are good men, as I stated in my paper, drawn from the various walks of life,"

and then in the last paragraph of that discussion you don't say:

"I again want to thank the gentlemen for their kind discussion of my paper."

A. It was my paper, my article.

Q. And at any point, you do not mention Dr. Foster Kennedy's name, do you, or even italicize any place in

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your article to show that it was taken from some other article.

A. No, I didn't mention Dr. Kennedy's name. He didn't ask me to in my communication. Now here is a portion here you don't seem to get. Dr. Kennedy said this—this doesn't appear in my article—"A friend of mine, Judge Clarke"—

The Court: Is it within the first five paragraphs?

Mr. Brown: Of his? No.

1712 The Witness: I am trying to point out, Judge, that I did not copy Dr. Kennedy's report verbatim.

Mr. Brown: All right, read that, "A friend of mine, Judge Clarke"—

A. "A friend of mine, Judge Clarke in New Jersey, was lately spoken to sharply in his court by a man with a foreign accent who protested against Judge Clark's ruling on the ground that he, the judge, was unfair in that he was clearly prejudiced in favor of the United States." Is that in my article?

Q. Could you use that in your article? Are you a friend of Judge Clark's?

A. No, I had no reason to use that in my article.

Q. You couldn't use it. You were no friend of Judge Clarke's?

A. It wasn't in the question of the paper.

Q. So you just couldn't use that portion of the article because you knew you didn't know Judge Clarke.

A. That wasn't in the subject, but you said verbatim, and it isn't verbatim.

The Court: Then the explanation is that that part of Dr. Kennedy's article was omitted when you used the paper.

The Witness: This portion, yes, sir, and many others.

1713 Q. Have you any letters from Dr. Kennedy?

A. I have one that I received in reply to the permission to use a portion of his article, but I don't know now whether I could find it or not.

Q. I will ask you to make a search and if you can find any such letter, to produce it. You keep your files, don't

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you?

A. I don't keep all letters, no. I keep a great many.

Q. If you have any such letter, produce it.

A. You imply, though, Mr. Brown, that probably I didn't receive that letter.

Q. I don't imply anything. I am asking if you have the letter to produce it, and I will ask you—

A. I will kindly produce it if I can find it. If I cannot, of course I cannot.

Q. I will ask you if immediately after recess you didn't go up to Mr. Hogan and say this, or this in substance, "Mr. Hogan, I haven't got any such letters. What am I going to do."

A. I did not say that.

Mr. Hogan: And I will back him up.

A. It isn't true.

Q. What did you say?

A. I said, "I had this letter, but I don't know whether I can find it or not." Now I did not say that.

Q. All right, will you make an examination of your files and if you have any letter from Dr. Foster Kennedy, will you please produce it?

A. If I can, yes.

Q. Yes, do your best.

Mr. Hogan: I want him to. I want you to look and if you have it, Doctor, I want you to say so, and if you don't have it—

A. I have sworn on this stand that I received such letter.

The Court: I believe we will go on the principle that if the Doctor finds any such letter it will be produced before the trial ends, if it is not produced you will assume that no such letter was found.

Mr. Brown: That's correct.

The Court: It won't be necessary for the Doctor to come back.

Mr. Hogan: I don't want, if he is not able to produce it, to have an implication that no such letter existed.

The Court: I said that no such letter was found.

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Mr. Hogan: Yes, sir. All right, Doctor.

The Court: Doctor, let me ask you a question.

1715 I didn't get quite clear from some excerpt that Mr.

Brown read, what was your opinion as shown by that excerpt that medical testimony on the question of sanity or insanity based upon a hypothetical question and referring to a previous time was not of much value to a jury?

The Witness: I obtained that information from Dr. Kennedy.

The Court: I say, was it your view that it was not of much value?

The Witness: No, it was not. I wanted to use that information from a man who was a great student and a great scholar.

The Court: I mean, did you put that in your article that it was not of much value to a jury?

The Witness: According to Dr. Kennedy's—

The Court: Wasn't it your article?

The Witness: I wrote the article, yes, sir.

The Court: You put it out under your name?

The Witness: Yes, sir.

The Court: And put that statement in it?

The Witness: That statement was in it, but it was borrowed from Dr. Kennedy.

The Court: I mean, you put it out as your statement, did you not?

The Witness: Oh, yes, particularly in reference, Judge, to criminality, to protection of crime.

The Court: Is the excerpt there? Maybe it better be read.

Mr. Brown: "Psychiatry cannot properly work through the existing criminal codes. Justice is diverted by the absurdity of hypothetical questions. Twelve laymen cannot be expected to appraise nicely the degree of responsibility of a paranoiac or a high-grade moron; and the differences of opinion between lawyers and doctors, and doctors and doctors, buttressed, if not directed, by funds from opposed interests, gossiped in the corridors and wrangled in the courts, elevate crime, debase law and

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prostitute medicine."

The Witness: Judge, may I say—

The Court: You can state it to the jury, Doctor. They are the ones that are going to consider it.

The Witness: I had no reference to the tribunal or courts in this article at all. It was the crimes that were committed in various places, and it seems that by wrangling of lawyers, that it was hard to get the facts to well meaning jurors.

The Court: What I was particularly interested in, was that your view at the present time as stated in your article of several years ago, or did you make that statement 1717 in that article without meaning it to be your views?

The Witness: That was not my original view, Judge.

The Court: Was it your view at the time that article was written?

The Witness: I was impressed by it.

The Court: Was it your view?

The Witness: It was in a measure, yes.

The Court: You mean you have changed views since then?

The Witness: I have changed my views often in medical questions.

The Court: When was that article written?

Mr. Brown: It was published January, 1940, and it was apparently delivered at Bowling Green at the meeting of the Kentucky Medical Association.

The Court: Are there any more questions of this witness?

Mr. Hogan: Yes, sir.

Redirect Examination by Mr. Hogan.

Q. As I believe you tried to explain a moment ago, those views had reference particularly to those overnight cooked up pleas of insanity, did they not, Doctor?

1718 A. Yes, together with crimes committed against young children that I pointed out in my paper.

Q. Where there was a background of legal adjudication at the hands of two juries and an incarceration in an

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institution for the insane for eleven months, and another incarceration or stay for a period of twelve weeks, that is not the type of insanity you refer to in that article, is it, Doctor?

A. No, sir.

Q. You respect the judgment of the courts and of the juries, do you not?

A. Absolutely.

Mr. Hogan: That's all.

Mr. Brown: That's all.

Mr. Hogan: The defense rests at this period.

Mr. Brown: All right, Your Honor, we will proceed immediately.

1719 DR. DAVID GALLOWAY called as a witness in behalf of the Government, in rebuttal was duly sworn, examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name, please, sir.

A. David Galloway.

Q. Where do you live?

A. Western State Hospital near Bolivar, Tennessee.

Q. What is your profession?

A. Physician.

Q. How long have you been practicing as a physician?

A. I graduated in medicine in 1909.

Q. Since then have you continuously followed your profession?

A. I have, yes.

Q. What official position do you now hold with the State of Tennessee?

A. Superintendent of Western State Hospital.

Q. As Superintendent of the Western State Hospital, do you have all the records of the Western State Hospital pertaining to any present or former patients?

A. I do.

Q. I will ask you to examine that folder and tell

Testimony of Dr. David Galloway

1720 the jury whether that is the original record of the Western State Hospital pertaining to the defendant, Thomas H. Robinson, Jr.?

A. This is the record on file when I took charge of the hospital.

Q. Now, do those records, Doctor—are they made in the ordinary course of business concerning the business with which the Western State Hospital is engaged?

A. Yes, I take it, as entered and examined and records are added to it as the case progresses.

Q. And do the records, as they indicate the date, are they made contemporaneously with the act that they are supposed to indicate?

A. They show the date at which the examination was made.

The Court: It is the regular course of business of the hospital to make such records?

Witness: It is.

Q. Now, Doctor, that is all.

Mr. Brown: I just wanted to introduce this record through him.

Q. Have you examined this photostatic copy, and can you tell the jury—I don't want to introduce the original record but I want to introduce a photostatic copy—can you tell the jury whether or not the photostatic copy

1721 I hand you contains a complete copy of all records on file in the Western State Hospital?

The Court: You mean pertaining to Thomas H. Robinson Jr.?

Mr. Brown: Yes.

Q. (Continuing) Pertaining to Thomas H. Robinson, Jr.

A. (After looking through file) There is no doubt about it in my mind.

Mr. Brown: I would like to introduce the original but I would like to substitute this photostatic copy as Government Exhibit No. 81, for identification.

The Court: I suppose there is no objection to the photostatic copy being filed?

Mr. Hogan: Not at all, Your Honor.

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(The above document was handed to the Reporter, marked Government Exhibit No. 81 for identification.)

Mr. Brown: That's all.

Cross-examination by Mr. Hogan.

Q. Is that a complete record?

A. So far as I know. I have only been there two months and that was the record that was there when I took charge of the hospital.

Q. What kind of a hospital is that?

1722 A. State Hospital for the Insane.

Q. What is the business of the hospital? What do they do there?

A. They care for the insane patients for the Western Division of Tennessee.

Q. It is an institution in which insane persons are kept?

A. That is right.

Q. They try to keep them there so long as they are insane?

A. Of course.

Q. You don't like to release them when they are insane, do you?

A. Well we try to do the best we can for them and try to get them back into society safely, if we can.

Q. Well so long as they are insane, you keep them there, don't you?

A. Yes.

E. W. COCKE, was called as a witness in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

1723 Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. I am Dr. E. W. Cocke.

Q. Where do you live, Doctor?

A. I live in Memphis, Tennessee.

Testimony of E. W. Cocke

Q. How long have you lived in Memphis?

A. For the past seven years.

Q. What profession do you follow, Doctor?

A. I am a physician.

Q. Of what schools are you a graduate?

A. University of Tennessee.

Q. When did you graduate from the University of Tennessee?

A. In 1911.

Q. Have you followed continuously your profession since 1911?

A. I have.

Q. Would you tell briefly to the jury your experience since 1911?

A. I graduated in 1911 and had the usual general hospital internship; and in 1914 I became Assistant Physician at the Western State Hospital, at Bolivar, Tennessee. I remained in that capacity for four years, and then I became Medical Superintendent in 1918 and I remained **1724** in that capacity until 1936. Now from 1932 to 1936

I was Commissioner of Institutions for the State of Tennessee, having under my supervision the penal and charitable institutions. At that time I still remained as Superintendent of the Hospital but took this position only temporarily. However, I remained there four years. I resigned and entered private practice in Memphis, Tennessee; and I have now and direct a hospital there, a 50-bed hospital, which is an open hospital, but I have a majority of mental and nervous patients all the time, and I direct the policies of the hospital.

Q. For how long, Doctor, have you specialized in the care and treatment of nervous diseases and mental diseases?

A. Since 1914. I might add that I am a member of the Tennessee Medical Association, the Shelby County Medical Association, and Shelby County is the County in which I live. I am a fellow of the American Psychiatric Association; and I am a member of the American Board of Psychiatry and Neurology.

Q. There has been introduced, or identified, but it has not been offered yet, certain records of the Western State

Testimony of E. W. Cocke

Hospital. Now here is the original and here is the copy, and you may examine both and see which you had
 1725 rather use. I will ask you if you were in charge of the Western State Hospital at Bolivar, Tennessee, during the year 1930 when the defendant, Thomas H. Robinson Jr., was admitted to that hospital?

A. I was.

Q. Were you in charge continuously during the time that Robinson was in that hospital?

A. I was.

Q. Would you examine your records, Doctor, and give the jury the date when he was admitted to the hospital and the date when he was discharged from the hospital?

A. If you will pardon me, I have not referred to these—this patient was admitted from Davidson County on May 25, 1930, having been transferred from the Central State Hospital at Nashville. He remained in the Western State Hospital until August 24, 1930.

Q. At the time of his admission, did he come from the Central State Hospital?

A. Yes, he was transferred from the Central State Hospital.

Q. Did you receive, along with the patient, the records of the Central State Hospital?

A. I did.

Q. You, of course, knew the diagnosis of the Western State Hospital?

A. Our Hospital? The Western?

1726 Q. No, I mean the Central State Hospital?

A. Yes.

Q. What was that diagnosis?

A. He was diagnosed as a dementia praecox case at the Central State.

Q. Was there any classification of that, Doctor, as received by you from the Central State Hospital?

A. I believe not.

Q. Would you tell the jury if in the opinion of yourself and the members of your staff as reflected by the records, if you agreed with the diagnosis of the Central State Hospital?

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A. We did not agree with the records of the Central State Hospital. Our staff diagnosed him as a psychopathic personality type—I guess that has been brought out.

Q. What do you mean by a psychopathic personality?

A. A psychopathic type of a person is an individual that is ill-equipped from birth to meet the demands of his environment. It is not like a mental defectiveness but it affects intellectual aspects.

Q. With reference to psychopathic personality, does that in your opinion denote a psychosis of any kind?

A. It does not. A psychosis means a mental disease—a diseased mind. Dementia praecox, that is a
 1727 psychosis. We did not think that he was suffering from a psychosis.

Q. Would you refer to your records there and, refreshing your recollection, tell the jury during his stay there any incident that you want to call to the attention of the jury; and give the jury the diagnosis that you made when he was released from the Western State Hospital?

A. (After looking through the record) Mr. Brown, if you will ask me again?

(The last question was read to the witness.)

A. When he was referred to or transmitted to this hospital I was quite familiar with this case. I knew Tom Robinson's father very well in Nashville, having come in contact with him many times. He was a very fine gentleman. I discussed this case at length with him, many times. He was transferred there and, if I remember correctly, he was placed in our receiving building and he was assigned various duties after examination. He was dissatisfied a great part of the time; he was hard to please. He would not come under discipline and it was rather difficult for us to control him and do for him. We kept him there until the date of this discharge; and the reason of the discharge, I
 1728 presume, was that a short time before, a week, ten days or two weeks, we had an occasion to take away from him his ground privileges. We let them go where they please around the place, but not to leave the grounds. I had been informed that he had been going to town, a town of about one thousand inhabitants. We for-

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bid the patients going to town unless accompanied by an attendant. During the time he was working around the hospital and, if I remember correctly, there was construction going on and I think one of the foremen had him keeping time for some of the men there. Well, anyway when we took away his privileges we confined him to the ward. Very soon after that his people came down, his father and mother and became dissatisfied because we had taken his privileges away from him, and therefore they demanded that he be released. Now I talked with them at length—I talked with his mother, and I talked with his father—I felt that they were doing the wrong thing by taking him away. Mind you, we had diagnosed him as a constitutional psychopath and according to that diagnosis he was not insane and I really did not have any right to hold him there after such a diagnosis, but I felt in view of his past history that he was more or less a menace to society, a menace socially, he had been in trouble; and I felt like he should be confined

and kept there. And with all of my trying to persuade Mr. Robinson, he took him away. He said his wife wanted to take him home and that he would just have to do it. And I told him what I thought would happen, that he would continue to get in trouble, but he left and before he left I took a statement which I required Mr. Robinson to sign, in a way assuming the responsibility. If anything happened we wanted to be that much in the clear and we should not have kept him anyway. And he signed this statement and he took him away and that is the last time I saw Tom Robinson.

Q. Now, will you refer to the statement which you have there and read it to the jury and then read any other letter that you desire to?

A. This is a statement that Mr. Robinson signed:

"I, Thomas H. Robinson, Sr., of Nashville, Tennessee, father of Thomas H. Robinson, Jr., a patient in the Western State Hospital, Bolivar, Tennessee, and who was transferred from the Central State Hospital, Nashville, Tennessee May 25, 1930, visited the Western State Hospital this date and conferred with

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Dr. E. W. Cocke, Superintendent of said institution regarding the advisability of removing Thomas H. Robinson, Jr. from the hospital as a patient.

1730 "Dr. Cocke's opinion is that the boy should remain in the hospital because he feels that he is an institutional patient. He feels after observation and examination that the boy is psychopathic and that from his experience with such cases he feels that if he should be taken away that the probability is that he will be a menace to society and that he will continue to cause me a great deal of trouble. He states that he is unstable and not capable of going out into the world and assuming the responsibilities of life. Dr. Cocke thinks that he should still be confined in this or some other institution for mental diseases. Dr. Cocke further believes that our undue interest in our son makes it rather difficult to continue with him as a patient, so long as we feel as we do."

We felt like he was not being given the proper consideration. (Continuing):

"I fully realize the circumstances under which the patient was transferred from the Central to the Western State Hospital. The record of the Central State Hospital states that he is suffering from a mental disease known as schizophrenia and upon that record the criminal case against him in Davidson County Criminal Court was nolle prossed as the result of 1731 the finding of the Central Hospital. After the case was nolle prossed the patient was recommitted under the Insanity Act of 1919 to the Central State Hospital and under special dispensation at the earnest request of myself the Commissioner of Institutions transferred him to the Western State Hospital.

"After due deliberation upon the part of myself and family and Dr. Cocke's opinion notwithstanding I have decided to remove my boy from the hospital and am perfectly willing to assume full responsibility regarding his future and general welfare. I agree, regardless

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of what might happen in the case of my boy, to assume every responsibility and not in any way hold the Western State Hospital responsible for anything that might arise later and, furthermore, will not expect any help from the Western State Hospital if my son gets into any more trouble, unless the Western State Hospital would feel disposed to come to my rescue.

“I fully appreciate the position taken by Dr. Cocke and I haven’t anything but the very best feeling toward him. I am aware of the fact that my son has
1732 been well cared for since he has been in the Western State Hospital and that every courtesy has been shown him. I further feel that he has been especially well treated and that more things have been done for his pleasure and general welfare than for the average patient confined therein. Dr. Cocke has been frank and honest with me in every transaction for which I sincerely appreciate. I am pursuing this course because I personally feel, notwithstanding professional opinion, that it is best that I take him out and give him a position and give him another trial.

(Signed) Thos. H. Robinson Sr.”

Q. Now, was he released from your institution at that time?

A. He was, on that date.

Q. And with reference to the diagnosis, that was made, Doctor, I will direct your attention to that and ask you to tell the jury what diagnosis was made at the time of his release?

A. His diagnosis was 22d, without psychosis, but with a psychopathic personality.

Q. Now did you feel and do you still feel that—what does 22d mean?

1733 A. That is a classification that is used by the American Psychiatric Association—we usually refer to those numbers. 22d means a person with psychopathic personality, without psychosis.

Q. Did you feel at that time, and do you still feel that at the time of his release from the Western State Hospital

Testimony of E. W. Cocke

that, although not insane, he was a menace to society?

A. I do.

Q. Will you refer to your records with reference to the letter of September 4, 1930 and read that letter to the jury?

A. Now this is a letter dated September 4, 1930, to Capt. R. H. Lyle, Commissioner, Department of Institutions, Nashville, Tenn; I wrote him:

“Dear Mr. Lyle:

“In re: Thomas H. Robinson Jr.

“You will doubtless recall all particulars concerning this case.

“I am herewith enclosing you copy of his complete history, also the document signed by Mr. Thomas H. Robinson Sr., without going into details you will recall that this patient robbed two houses and obtained several thousand dollars worth of jewelry. He was
1734 ordered sent to the Central Hospital by the Davidson County Criminal Court and Dr. Farmer reported that he was a case of dementia praecox. The result of this examination was the cause of the case being nolle prossed. You will recall that there was some trouble in Central Hospital regarding this case and because the parents were dissatisfied you very kindly ordered the patient transferred from the Central to this hospital, after he had been recommitted to the Central Hospital according to the insanity act of 1919.

“You will note from the summary the general attitude of the patient and the trouble we had with him. When I ordered him confined to the ward after breaking many rules his parents immediately came down and demanded his release. Personally, I was very glad to release him. You will note from the statement signed by Mr. Robinson we recommended that he stay here and he took him against our advice. That's the great trouble with the boy, he has too much father and mother. I predict the boy will be in penitentiary before a great while.

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1735 "When the patient was received into this hospital we extended him and his parents who accompanied him all the courtesies possible. We gave him outside privileges and he violated many rules.

"Dr. Farmer diagnosed the case Dementia Praecox, but the unanimous opinion of our staff is that he is one of those constitutional psychopathic personalities, the type that will commit crime. We were of the opinion that he was not legally insane—

Q. (Interrupting) That he was not legally insane?

A. Yes, not legally insane. (Reading):

"He knows right from wrong as any normal person would, but he is just one of those types that cannot resist temptation of doing wrong and committing crimes. I insisted on Mr. Robinson keeping the boy here. I felt that we were giving him good advice, but he thought otherwise. It seems that they won't stand for the boy to be disciplined and without discipline or institutionalization the boy will never make the grade.

"I felt that I should write you giving you this information because your attention might be called to the case later on and you would be in position of discussing the matter intelligently.

"Yours very truly,

"E. W. Cocke, M. D. Supt."

1736 Mr. Brown: Now I want to file this exhibit that has already been identified as Government Exhibit No. 81.

(The document referred to was handed to the Reporter and filed with the record.)

Mr. Brown: That's all.

Cross-examination by Mr. Hogan.

Q. I believe you said a minute ago that you knew Thomas H. Robinson Sr.? The father of this boy?

A. I did.

Q. Over what period of years had you known him?

A. I had known him several years. I had met him in

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Nashville. I visited Nashville frequently, which is the capital of the State. I would go there on business and I would see Mr. Robinson. He was a long time connected with a bridge concern there and we directly or indirectly had business at times with them, etc.

Q. Was Mr. Robinson in the business of a bridge engineer?

A. Yes, sir.

Q. With the Nashville Bridge Company?

A. Yes, sir.

Q. I believe he was considered one of the best bridge engineers in the South, wasn't he?

A. I understood that he was a very competent engineer.

1737 Q. He was a man that never got in any trouble, was he not?

A. I never heard of it.

Q. Well you would have heard of it by having business contacts with him, wouldn't you?

A. I think I would, yes.

Q. And you didn't see Tom Jr. until you saw him there at Bolivar, Tennessee?

A. Until he was transported there to that institution I do not think I ever saw him before.

Q. What do you describe or what do you define the term psychopathic personality to be, or constitutional psychopathic?

A. Well I feel that that it is a rather broad condition. They are a very anti-social type of people. As I have said to Mr. Brown, I think a psychopath is an individual who is from birth ill-equipped to meet the demands of society.

Q. I didn't understand you?

A. I say that I think from birth they are psychopathic and that they are not able to meet the demands of society, etc. They are not feeble-minded. They are intelligent. They use poor judgment. They are unstable. They are

1738 anti-social. They are usually getting into some kind of trouble all the time, one way or another.

Q. You mean as kids?

A. Yes, I mean from puberty.

Testimony of E. W. Cocke

Q. Kids who steal dimes from the table or steal petty money to go to the picture shows in early childhood?

A. Yes. They are forever in trouble, all the way along.

Q. On up through childhood?

A. All through life.

Q. Are these psychopathic personalities or constitutional psychopaths sick persons?

A. Well that is a broad question. They are certainly not normal individuals. I think we might say that anybody that is not normal is abnormal or he is sick in some way. He certainly is not a normal individual, by any means.

Q. Then, if he is not normal, there is something wrong with him?

A. That is right.

Q. He is, maybe, sick?

A. Well you know the word "sick" covers a lot. If you say a person is sick you have got to know what he is sick of.

Q. Sick of mind?

1739 A. Well, he is not mental. They do not have mental deterioration. It is not a mental disease. It is a personality difficulty there. He is constantly in trouble all the time.

Q. Well now there are only two ways that I know he could be sick, sick of mind and sick of body.

A. I would not say he was sick of mind.

Q. Would you say that he was sick of body?

A. I say that they are incapacitated to meet the demands of society.

Q. Well a man has a will and a conscience, does he not, Doctor?

A. Yes.

Q. He is governed by his willpower, isn't he?

A. Well, more or less yes, he is.

Q. Now leaving that line for just a moment, what do you denote the term "psychosis" to be?

A. Psychosis is just like you would say a man is sick. He has got a mental disease. There are many types of mental diseases. Psychosis means that he is sick mentally.

Q. What does the term "psychopath" mean?

Testimony of E. W. Cocke

A. Well a general unstableness.

1740 Q. Does it mean a person of a psychopathic temperament?

A. Well, there is a psychopathic trend.

Q. Then if a psychopathic is a mental disease, then a—

A. (Interrupting) Wait a minute. It is not a disease.

Q. Well what is it then?

A. They are unstable individuals?

Q. Well is psychopath a disease?

A. It is a psychopathic trend. A mental trend.

Q. A trend toward a mental disease?

A. Yes, bordering on that.

Q. Now you said a moment ago that these psychopathic personalities or constitutional psychopaths are born that way?

A. That is my opinion.

Q. Do they ever recover?

A. I have never seen one recover.

Q. If one had recovered, then you would admit that your theory would be incorrect?

A. I would.

Q. Then if this Tom Robinson Jr. has recovered, then your diagnosis in 1930 was incorrect?

A. That is true.

1741 Q. Now was there anything—you did not want him to be removed from Bolivar, did you, Doctor?

A. I thought it was inadvisable. I had known as I have said, Mr. Robinson Sr.—there was a personal feeling in the matter. I really wanted to do something for this boy and for his father and mother.

Q. You did not think he was insane, did you?

A. That is right and, as I said, I had really no right, legal right, to continue to keep this boy there. It was just more or less I was straining a point to do it, according to the diagnosis of our staff members and my personal feeling about it.

Q. You were operating, of course, an insane institution?

A. Correct.

Testimony of E. W. Cocke

Q. And yet you wanted to keep, over the objection of his father, one whom you felt was not insane?

A. I felt that the boy needed that hospital institutional care.

Q. Now isn't this true, Doctor, that the term "psychopathic personality" is an unsatisfactory and unscientific diagnosis because there is no agreement on the classification of the different types of psychopathic or abnormal personality?

1742 A. There are types of definitions as to a psychopathic personality. Many different words they use to express but after all it is all boiled down to just about one thing and they can use as many words as they choose. It is an unsatisfactory definition to try to give.

Q. You admit that?

A. I admit it.

Q. I will ask you this question. Where are you now located, Doctor?

A. At Memphis, Tennessee.

Q. Are you operating an institution there now?

A. No, I have one institution there that is operated by another party who owns it but I keep my patients there and I direct the policies of that institution.

Q. I believe that Kraepelin, the father of modern psychiatry, gave these individuals, these constitutional psychopaths, or unstable personalities, as you called them, the term moral imbeciles? Is that right?

A. Yes, he called it that. I think if he had have lived longer he would have changed his mind.

Q. He considered them lacking in the emotional sphere; did he not?

A. Yes, he felt that they were emotionally unstable.

Q. Didn't he consider them blind to the welfare
1743 of others?

A. He perhaps did.

Q. There are a lot of subgroups or headings in this term "psychopathic personality"?

A. Yes, there are a lot of them.

Q. Pyromaniacs, kleptomaniacs, and many others?

A. That is true. And chronic alcoholism, that might

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* be included in there.

Q. Now, Doctor, aren't there certain mental characteristics, and I emphasize "mental", that occur with such frequency in the cases of psychopathic personalities as to be almost pathognomonic.

A. Pathognomonic.

Q. Yes, pathognomonic of the disease?

A. Will you read that again to me, please?

Q. There are certain mental characteristics that occur with such frequency in the cases of psychopathic personalities as to be almost pathognomonic of the disease?

A. Well now, we have this that we have not discussed yet, the classification of psychopathic—

Q. (Interrupting) Well will you answer yes or no?

A. Yes, there are certain pathognomonic symptoms.

Mr. Brown: Now you may make your explanation.

A. (Continuing) But I would like to say this to
1744 you, that we have two classifications that we use today, a constitutional psychopathic personality with psychosis and one without the psychosis. Many times we find a psychopath who has a psychosis and it is up to us to try to make that differentiation.

Q. Well, is it possible to have a psychopath without a psychosis?

A. Yes.

Q. And you say that is true?

A. A psychopath without psychosis?

Q. Yes?

A. Indeed.

Q. Aren't medical experts in disagreement on that?

A. No, they are not. It is adopted by the American Psychiatric Association, those two classifications.

Q. Well, aren't the medical experts in disagreement about that?

A. Medical experts and medical men will disagree on anything. It is one doctor's opinion against the other.

Q. Medical science is not an exact science?

A. That's true.

Q. Now, most men are guided by some mysterious force, are they not?

Testimony of E. W. Cocke

A. I beg your pardon?

1745 Q. Most men are guided by some mysterious force?

A. Well, I don't know. I just don't know whether I could answer that question or not. Mysterious force? Most people are guided by one force or another but I don't know of any mystery about the thing. "Mysterious force" I don't like that term.

Q. You say you don't like that term?

A. No. If you would give me a different sort of a term there I might get on to it better.

Q. Suppose I tell you that I am using your own term that you used once before, would you still say you don't like it?

A. No, I might have used it.

Q. You like it a little better, now, don't you?

A. Well I don't know that I would. I think probably I was wrong then.

Q. "The individual with a psychopathic personality seems to be unable or unwilling to use his conscience as does a normal person." Is that your view?

A. Yes.

Q. And that was your view 13 years ago, too, was it not?

A. It might have been.

1746 Q. These psychopathic personalities have an abnormal, emotional reaction, do they not?

A. Yes they do. Unstable emotionally.

Q. You see these patients not only speak in the most brutal terms of their own parents, even threatening to kill them when they secure their liberty, but also show an entire absence of affection when their parents visit them in state institutions?

A. Many times.

Q. That's an abnormality, isn't it?

A. Yes, it is an abnormality.

Q. It is a symptom, isn't it, Doctor?

A. Well it is a characteristic symptom, yes, of an unstable person.

Q. It is a deluded idea, isn't it?

Testimony of E. W. Cocke

A. I wouldn't say it is a delusional idea.

Q. What is a delusion?

A. A false imaginary situation, and a false imagination of an imaginary thing.

Q. Well wouldn't an idea toward a parent, a harmful idea, be an abnormal idea?

A. Well it certainly is not normal. You know, to commit crime is not normal.

Q. There is something wrong with him, isn't there?

1747 A. To commit crime he is not normal. There is something wrong. There is no doubt about that.

Q. He is sick mentally?

A. No, I would not say he is sick mentally.

Q. Well if there is no evidence of a disease of the body—

A. (Interrupting) He has no disease of his mind now. He is all intellectually a misfit. He is emotionally unstable. He lacks judgment. He has no consideration for other folks—but that doesn't mean he is sick mentally. I am trying to confine my statements to mental disease now.

Q. He is out of gear, in other words?

A. Yes, he is out of gear.

Q. His mind is out of gear?

A. Don't make me say his mind is out of gear. I am testifying as scientifically as I know how to. And I want to say that he is not, in my opinion—of course I could be wrong—I don't think then that he was suffering from a mental disease.

Q. We are talking about the mind now. There is an objective mind and a subjective mind. You know that to be true, do you not?

A. Yes.

Q. Now what does the subjective mind do?

1748 A. Well it is very difficult to say what the subjective mind does. I think you have got to combine both objectives and subjectives to get anywhere.

Q. Well, that's true. The subjective mind formulates the idea. That is right, isn't it?

A. That is right.

Testimony of E. W. Cocke

Q. And the objective mind carries those ideas into action?

A. That is right.

Q. Now, if the subjective mind formulates an abnormal idea and the objective mind is persuaded by the subjective mind—

A. (Interrupting) You are right.

Q. And carries the perverted idea into action—

A. (Interrupting) That is right.

Q. (Continuing) There is a lack of coordination between those two minds, isn't it?

A. Well it is in many respects, yes.

Q. In the normal person the subjective and objective mind are coordinated or stabilized?

A. That's true.

Q. In the normal person the objective mind serves as a braking power upon the perverted or distorted ideas formulated in the subjective mind, and prevents
1749 the distorted or perverted ideas from being put into action. Now, that is the normal person. Do you agree with that?

A. That is right.

Q. In the person who is not normal, the subjective mind formulates distorted ideas, perverted ideas, wild ideas, grandiose ideas, and the objective mind, not being in coordination, not having the brakes on, permits these ideas in the subjective mind to override the willpower and be put into action?

A. I accept that.

Q. Then you have a person who is wrong and out of gear?

A. He is out of gear.

Q. Then you medical men get into disagreement as to how to type it?

A. Unfortunately we disagree many times.

Q. You may, as one medical expert, type him as one type of individual such as a psychopathic personality, and another medical man may disagree and classify him as a dementia praecox?

A. That is quite true.

Testimony of E. W. Cocke

Q. So now the fact that you diagnosed Tom Robinson Jr. in 1930 as a constitutional psychopath or psychopathic personality does not mean that your judgment
 1750 was infallible,* does it?

A. That is true.

Q. You could have been wrong?

A. I could have been but I don't think I was.

Q. You honestly believe that you were right?

A. I do.

Q. Now, did you have anything, any history, of Tom Robinson's case when you so diagnosed him, to tell you that he had been a petty thief in his early childhood?

A. I did.

Q. What had he stolen?

A. Oh petty—now we had the history of this boy, as I remember this case, and I remember pretty well about it—Mr. Robinson talked to me quite a lot personally. My sister worked up this case—

Q. (Interrupting) Now just answer my question. What had Tom Robinson Jr. in very early childhood stolen?

A. I won't say about that. I don't recall any petty stuff.

Q. He had not stolen small amounts to go to the picture show, etc.?

A. I don't think I ever heard that.

Q. You had nothing in your history that told you that before he was 15 years of age he had been other-
 1751 wise than a normal child, had you?

A. I don't think so; not that I remember. These records I have not looked over for a long time, but I don't think so.

Q. So it was not hereditary in the strictest sense then because any actions that were not normal did not manifest themselves until after he was beyond 15 or 16 years of age. Isn't that true?

A. I think that is true. I think from a hereditary standpoint, if I remember, that Tom's mother was a very nervous type of person. I was told that by Mr. Robinson himself.

Q. Now a moment ago I asked you about Mr. Robin-

Testimony of E. W. Cocke

son Sr. and you said that he was a good business man and—

A. (Interrupting) That is my understanding.

Q. And that he had never been in any trouble?

A. Oh, not that I know of.

Q. And his mother had never been in any trouble?

A. Oh no, but she was just a nervous type of individual.

Q. Now we had a woman juror to get pretty nervous here the other day and we lost her. Nervousness does not necessarily denote heredity, does it?

A. No. No.

1752 Q. Therefore, from what you knew and gathered, there was nothing about Tom Robinson's life that indicated to you that either his father or his mother were unstable except as you have said his mother was nervous?

A. That's right.

Q. Therefore, there was nothing by which you could be guided or base your opinion on that in his early childhood there was any abnormality in Tom Robinson Jr.?

A. I don't think so.

Q. So therefore, with that in view, wasn't your psychopathic personality diagnosis improper?

A. Unfortunately, sir, these cases are overlooked in early life. This might have been one that was overlooked. It might not. I feel like if they were found in early life, which they should be, they ought to be right then confined in some institution. I think if you have a paper there that I wrote, I think I said that they ought to be placed in a separate institution.

Q. All right. Now let's see. You said, "If they (meaning psychopathic personalities) are carefully studied, it will be found that the conflict with the law began at a very early age in a series of petty delinquencies, each trivial, it may be, in itself, but at the same time, serving as valuable indicators of what the future

1753 of the individual will be."

A. Yes.

Q. You didn't have any history of any petty thievery,

Testimony of E. W. Cocke

did you, Doctor?

A. No, that's true. But we can't say that every case will be a pattern case. We can't do that.

Q. But you said if they are carefully studied it will be found that the conflict with the law began at a very early age in a series of petty—

A. (Interrupting) I do feel that way about it, if it is carefully studied.

Q. Did you carefully study this boy?

A. I don't know that we went that far along.

Q. Do you mean to say that you made an opinion, or formulated an opinion based upon a careful study?

A. We felt he was such a Pathognomonic trend that you went through a while ago, the symptoms were so outstanding that we didn't have to go that far back.

Q. You took a chance, in other words, about your diagnosis being correct—

A. (Interrupting) The symptoms were so outstanding.

Q. But your diagnosis has been exploded or proven incorrect when you admitted a moment ago that if
1754 this boy had been restored you would say that you made a wrong diagnosis?

A. I would say that I had made a wrong diagnosis, if he has been restored.

Q. Assuming that he has been restored, and he is of record in this court as sane, would you say your diagnosis was incorrect?

Mr. Brown: Well now wait a minute. I am going to object to that. The doctors have not said that he was restored. I think they have said that he is sane now and this witness says that he has always been sane.

Mr. Hogan: I think it is a fair question.

The Court: Well I think the question would be whether or not this man admits he has been restored. Somebody else may say he has been restored and this witness may say he has not. I think this witness is entitled to his own opinion. If this witness feels in his opinion that this man has been restored he may be wrong, but because somebody else thinks he has been restored does not mean he thinks so.

Testimony of E. W. Cocke

Q. Well, Doctor, have you seen Tom Robinson Jr. since 1930 except today?

A. I have not.

Q. And you haven't had any opportunity to make any diagnosis?

1755 A. I have not seen him.

Q. So that you cannot, from this witness stand, say whether there has been any change in him?

A. I can say this, that I still maintain from the record and from my observation of him there that he is a psychopathic personality and is not insane and if he is not insane he has never recovered, because he has never been insane.

Q. Then if I understand you correctly, these psychopathic personalities are hereditary abnormalities?

A. No. We can't prove anything as hereditary. We have got a lot of theories.

Q. Then you back up on that, do you?

Mr. Brown: He never said anything like that.

A. We have got a lot of theories but we can't prove anything as hereditary.

Q. Didn't you write, "The problem of heredity is an additional feature of this condition that will require the most careful study in the future"?

A. I expect I did. I have not looked at that paper in a long time and I have forgotten what I did say, but we change our opinions so much that I might have said that and have changed my mind now.

The Court: Give him the paper and the circumstances under which he may have made such a statement.

1756 Q. The paper I am reading from is a paper purported to have been authored or prepared by you and read in section on mental hygiene, Tennessee Conference of Social Work, Memphis, Tennessee, March 5-7, 1930. Does that refresh your recollection.

A. I think I wrote the paper but I have forgotten just what I said.

Q. Well, to refresh your recollection, didn't you say this in that paper, "While every person is entitled to any

Testimony of E. W. Coker

operation for a defect which caused him to deviate from the physically normal, it is useless to expect that such operations or any other procedure, surgical or medical or spiritual, available to the present generation, will effect a cure." Now does that recall your statement?

A. That's right.

Q. "The very nature of the condition seems to spell hopelessness, as far as a transforming change is concerned—

A. (Interrupting) That is right.

Q. (Continuing) And the best that we can hope for is to guard the individual from his own warped and twisted nature and the community from the constant assaults which he would make on its peace were he at liberty."

A. I still think that.

1757 Q. Therefore you term a psychopathic personality as a hopeless, incurable personality?

A. I do.

Q. "Looking at the psychopathic personality from this standpoint of hopeless incurability, the only logical treatment is segregation in a special institution for life, which proposition has been made by a number of our foremost students of this particular type of criminal." Now you said that, didn't you?

A. I did.

Q. Segregation you said was an expensive feature, didn't you?

A. I did.

Q. "The problem of heredity is an additional feature of this condition that will require the most careful study in the future"?

A. I did. And I said that they should be sterilized and placed in an institution for life.

Q. I am coming to that. "The preventive measure of choice is sterilization. Such a law has been passed in many states in regard to the defective, the epileptic and the insane, and I believe that it is only a question of time until it will be applied to certain classes of criminals, especially the psychopathic personalities." Did

1758 you say that?

Testimony of E. W. Cocke

A. I did.

Q. 'If they were placed on a farm, sterilized, and, as a reward for good behavior, allowed to marry and live a semi-normal sex life with female psychopaths who have also been sterilized, they would, at least, be given a chance to spend their remaining years under conditions that were a little more socially humane.'

A. I said that.

Q. That was your view then?

A. Yes, sir.

Q. You still think they should be sterilized?

A. I am still of that same opinion.

Q. I believe you said that they should be placed on a large agricultural farm with dairy facilities?

A. I stated that. Of course, as I said, it is an expensive measure to have to take care of about 30% or 40% of the people in the penitentiaries today and something has got to be worked out from an economical standpoint.

Q. Well, I say you think they ought to be placed on a large farm, where there are large herds of cattle—

A. (Interrupting) In an institution where they can make their own way and make their living.

1759 Q. Then you are opposed to confine them?

A. No, they should be confined on a large agriculture, farming place.

Q. You are against strict confinement?

A. I think they should be under absolute supervision and restrained in an institution where they will remain for life, and there taught a trade. Farming is very wholesome, outdoor exercise and so on. I just merely mentioned farming.

Q. You still ascribe to the theory, don't you, Doctor, that these types are hopelessly incurable?

A. I do.

Q. And I will ask you again that, if Tom Robinson Jr. has been cured, your diagnosis was incorrect?

A. If he was insane and has been cured, my diagnosis was incorrect.

Q. Oh no. If he was a psychopathic personality and has been cured, then your diagnosis is incorrect?

Testimony of E. W. Cocke

A. He hasn't been cured then.

Q. Well do you know that?

A. If we were correct in our diagnosis, he has not been cured.

Q. Then it logically follows that if he has been cured, your diagnosis was incorrect?

1760 Mr. Brown: Well I am going to object to that.

The Court: We have gone into that two or three times, haven't we?

Mr. Hogan: Well I don't think we have gone into that particular phase of it.

The Court: The witness said he never saw one recover, as I understand it.

Q. And, according to your belief, they never recover?

A. That's right.

Q. If there is a recovery, they would come under some other type than a constitutional psychopath?

A. Some fellow missed it.

Q. Then you missed it if that is true?

A. That's right.

Q. Because you haven't seen him and you don't know whether you missed it or not?

A. That's right.

Mr. Hogan: That is all, Doctor.

The Court: We will take the adjournment at this time, gentlemen. Members of the Jury we will adjourn for the noon recess; do not discuss this matter among yourselves, or with anyone or permit anyone to come in contact with you about this case in any way. Eat lightly for lunch to-day, if you please, and return at 2 o'clock.

1761 Met pursuant to the noon adjournment, and continued with the trial as follows:

RALPH R. BARKER was called as a witness in rebuttal and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Innan.

Q. What is your name?

A. Ralph R. Barker.

Testimony of Ralph R. Barker

Q. Where are you employed?

A. At Du Pont Company at Old Hickory, Tennessee.

Q. In what capacity?

A. Employment supervisor.

Q. As such Employment Supervisor do you have custody and control of the employment record of Thomas H. Robinson Jr. with the E. I. Du Pont and Nemours Company?

A. I do.

Q. Do you have that record with you?

A. I do.

Q. Will you produce it, please?

A. All right.

Q. Was that record made in the ordinary course of business?

A. Yes, sir.

1762 Q. Is that a part of the records of the E. I. Du Pont and Nemours Company?

A. Yes, sir.

Q. Was it part of the usual course of business of the Du Pont Nemours Company to make such a record?

A. It was.

Q. Was the record made at the time the transaction occurred which is reflected on there?

A. To the best of my knowledge it was.

Q. In the usual course of business?

A. Yes, sir.

Q. Do you know the defendant, Thomas Henry Robinson Jr. yourself?

A. I do not.

Q. Will you refer to that record and tell the jury whether or not Robinson Jr. was employed by the Du Pont Company at Old Hickory, Tennessee?

A. This record shows that Thomas Henry Robinson Jr. was employed by the Du Pont Company during two periods of time.

Q. What was the first period?

A. The first period was from 9-4-25 to 9-19-25.

Q. And the second period?

A. The second period was from 10-31-33 to 4-23-

Testimony of Ralph R. Barker

34.

1763 Q. I will ask you to file those records with your testimony as Government Exhibit No. 82, with permission to withdraw it and at the close of the trial substitute copies.

A. All right.

(The records above described were handed to the Reporter, marked Exhibit for the Government No. 82, and filed with the record.)

Cross-examination by Mr. Hogan.

Q. Mr. Barker, what is the year of that first employment?

A. 1925.

Q. Is there any record of his reemployment after 1934?

A. No, sir.

JOHN A. WARD was called by the government in rebuttal and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. John A. Ward.

1764 Q. Where do you live now?

A. Wilmington, Delaware.

Q. By whom are you employed?

A. E. I. Du Pont & Nemours Company.

Q. In 1934, where were you employed?

A. In Old Hickory, Tennessee.

Q. When did you go to Old Hickory, Tennessee?

A. I went to Old Hickory in September of 1933 the last time.

Q. And did you remain there through April 1934?

A. Yes.

Q. Were you employed by the same company?

A. I was.

Testimony of John A. Ward

Q. And in what capacity?

A. As Chief Clerk of the construction job that was going on there at that time.

Q. Do you know the defendant Thomas H. Robinson Jr.?

A. Yes.

Q. Was he employed by your company?

A. He was.

Q. I show you Government Exhibit No. 82 and ask you if you recognize those records?

A. I do.

1765 Q. Did you handle the employment of this defendant Robinson?

A. I didn't hear you.

Q. Did you employ him yourself?

A. Yes.

Q. In what capacity was he employed?

A. Outside timekeeper.

Q. How many men were on the job? That is, how many men whose time had to be kept?

A. Well that was a variable figure.

Q. From what figure to what figure?

A. Well at one time there were very few, and then there were as many as 1100.

Q. From October 1933 to April 1934 what would be the highest and lowest?

A. The highest would have been about 1100, I would say.

Q. Did you have a time clock?

A. No.

Q. The timekeeper was the person who kept the time. Is that right?

A. They checked the men in the field twice a day. They were supposed to go out and see every man twice a day.

Q. Did you from the period of October 1933 to
1766 April 1934 have occasion to see the defendant Robinson often?

A. Not every day, but I would say five or six times a week.

Q. From your observation of him, tell the jury what

Testimony of John A. Ward

his actions were—whether they were normal or abnormal?

A. He did us a very good job.

Q. From an educational standpoint, what was your observation of him?

A. I think he was quite a well educated man.

Q. From your observation of him did he appear to be a person who knew right from wrong?

Mr. Hogan: Now I object to that because he is not an expert and I cannot believe that anybody can say by looking whether a man can say he knows right from wrong.

The Court: Not from just looking but from contact from any act, any talks you might have had with him, from your whole contact with him. The witness will understand that he is not attempting to give an expert's opinion, but giving a layman's opinion. I think the witness can have the benefit of a laymen's opinion of what his acts and contacts were.

A. I would say he was a good employee. He did this job properly. We had no difficulty with him. He was one of many employees.

Q. Did he leave the company voluntarily?

1767. A. No, he was discharged.

Q. Will you refer to the records and tell the jury the reason for his leaving?

A. In my own handwriting here it says, "Was a very satisfactory timekeeper, but past record makes his retention impossible."

Cross-examination by Mr. Hogan.

Q. Mr. Ward, I believe you were called upon at one time to bring those time records, or Tom Robinson Jr.'s time records into court to establish that Robinsen was on duty at a particular time, were you not?

A. No, sir. These records to my knowledge have never been out of Old Hickory until right now.

Q. Were you in charge of those records?

A. Normally, yes. The Chief Timekeeper was in charge of them, but no one could take them out of the office without my permission.

Q. Well, were they taken out of the office to establish

Testimony of John A. Ward

his—

A. (Interrupting) I am certain that they have never been out of the office until now.

Q. Then why did you discharge him?

1768 A. Because I was informed by one of the employees of the plant that he had been in trouble with the authorities. He was a bonded employee. He had a fidelity bond and I realized that if I told the bonding company that I found that he had a criminal record, we will call it, or had been in trouble, that they would cancel the bond and I would have to leave him go, because it was a bonded job that he was employed in.

Q. So you yourself told this man that his services were no longer necessary with that company?

A. Yes, sir.

Q. I mean you personally told him?

A. Yes, sir.

Q. How did he accept that?

A. Very nicely. We had no argument at all.

Q. Did it make any impression upon him at all? It didn't please him, did it?

A. Well you are asking me to tell you something that happened a long time ago.

Q. Well so is the government.

A. He was not happy about it. His father came out with him the following day to see me and he asked me if I couldn't change my mind and I showed him my position and told him I couldn't.

1769 Q. Under your company's rules, you could not take him back?

A. Unless I contacted the bonding company and got their permission, and I was almost certain that they would turn him down.

Q. And you did not take him back?

A. No.

Q. I believe you know that he used your name, or that he used the name of John Ward some time later, did you not?

A. I have heard that was true. I have not lived in

Testimony of John A. Ward

this country much in the last ten years, or nine years, so he probably could have done a lot of things that I would not have heard of.

The Court: You mean in this part of the country or the United States?

Witness: Out of the United States.

The Court: You have been out of the United States?

Witness: Yes, sir.

Q. So, evidently your discharging him made some deep-rooted impression on this boy's mind?

Mr. Brown: How could this witness know what impression it would make on somebody's mind.

The Court: I think this witness can merely
1770 testify as to what Robinson said or did at the time or later when he saw him. What Robinson thought afterwards this witness certainly would not know.

Mr. Hogan: That's all.

Redirect Examination by Mr. Inman.

Q. I will ask you whether or not when he was discharged from this bonded position you offered him any other job that was not bonded?

A. Yes, to the best of my recollection I told him that he would be perfectly free to have a job as a helper, which was not a bonded job, if he wanted it.

Q. And did he accept that job?

A. No, he did not.

Recross-examination by Mr. Hogan.

Q. He felt that that was beneath his dignity?

A. I don't know what he thought.

Q. He didn't take it, did he?

A. No, he didn't take it.

Q. He wanted to be a man of authority, in charge—

The Court (Interrupting): Now just a minute.
1771 What he said this witness can tell. What he might have thought, I don't know that this witness would know unless it was expressed in some way.

Mr. Hogan: That's all.

Testimony of Merl E. Long

DR. MERL E. LONG was called as a witness in rebuttal by the government and, after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Dr. Merl E. Long.

Q. What is your profession, Doctor?

A. Dentistry.

Q. How long have you been practicing dentistry?

A. Since 1925.

Q. And in 1934 did you have an office in the Forsythe Building at Oak Park, Illinois?

A. Yes, sir.

Q. Is your office still in that building?

A. Yes, sir.

Q. Did you know the defendant, Thomas H. Robinsin Jr. in 1934?

1772 A. Yes, sir.

Q. Was he employed by that building at that time?

A. Yes, sir.

Q. In what capacity?

A. As a janitor.

Q. From July 12, 1934, up to August 16, 1934, did you have occasion to see him professionally?

A. Yes, sir.

Q. About how many times did he call at your office?

A. About eight or nine times.

Q. In addition to the visits to your office did you see him and talk to him?

A. In the parking lot back of the building.

Q. During that period of time did you have occasion to observe him and engage him in conversation?

A. Yes, sir.

Q. From your observation of him and your conversation with him, tell the jury whether or not in your opinion he was a man who knew right from wrong?

Mr. Hogan: Same objection?

Testimony of Merl E. Long

The Court: The same admonition to the jury. I think this witness can tell from his contacts with the defendant, and from his observation of him, and what he did, **1773** and how he talked, as to what his impressions as an ordinary man would be as to the conduct of this defendant.

A. In my opinion I think he was a normal man.

Q. You think he was a normal man, you said?

A. Yes.

Q. Do you think he knew right from wrong?

A. Yes, sir.

Q. From your conversation with him and from your observation of him, tell the jury whether or not in your opinion he was a man who realized the consequences of his acts?

Mr. Hogan: Same objection.

The Court: Same admonition to the jury, keeping in mind that the witness is not a medical witness; that he is a layman like the rest of us are, giving a layman's impression.

A. I think so.

Q. From an intelligence standpoint, what was your idea of his intelligence?

A. Well I think he is above the average intelligence.

Q. Did you discuss with him that matter?

A. No I don't think so.

Q. Was there any discussion between you and **1774** Robinson as to why a man of his intelligence would hold that kind of a job?

A. I asked him why he was keeping the job as janitor and he said to tide him over until he could get a better job.

Cross-examination by Mr. Hogan.

Q. You are not a medical doctor, are you?

A. No, sir.

Q. Are you a psychiatrist?

A. No, sir.

Q. Have you ever conducted any test on any individual to determine their mental ability?

Testimony of Merl E. Long

A. No, I would have no occasion to.

Q. You haven't, have you?

A. No, sir.

COMMANDER O. C. DEWEY was called as a witness and after having been first duly sworn was examined and testified in behalf of the government as follows:

1775 Direct Examination by Mr. Brown.

Q. State your name?

A. Lt. Commander O. C. Dewey.

Q. Of the United States Navy?

A. Yes, sir.

Q. Where are you stationed, Commander Dewey?

A. At the Naval Training Station, Great Lakes, Illinois.

Q. During the year 1936, what position with the government did you hold?

A. Special Agent in Charge of the Federal Bureau of Investigation at Louisville.

Q. Were you Special Agent in Charge and were you present at Louisville when the defendant, Thomas H. Robinson Jr. was returned from California to Louisville?

A. Yes, I was.

Mr. Hogan: Let me ask this witness one or two questions. Commander Dewey, have you been seated in the court room at any time during these proceedings?

Witness: No, sir, I have not.

Q. Did you see this defendant, Thomas H. Robinson Jr., on May 12th and 13th, 1936?

A. Yes, sir.

1776 Q. Did you have any conversation with this defendant in your offices in the Starks Building on those dates?

A. I did.

Q. Were you present in the court room on May 13, 1936, when the defendant Robinson was brought into the court room?

A. Yes, sir.

Testimony of Commander O. C. Dewey

Q. I will ask you if the defendant Robinson was shackled?

A. No, sir, he was not.

Q. Was the defendant handcuffed to anyone?

A. Yes, sir, he was handcuffed to one of my Agents.

Q. One arm or both arms?

A. One arm.

Q. Did you at any time during those two days threaten the defendant Robinson with death if he did not plead guilty to the indictment? Or did you intimate in any way or by any motion or any action whatsoever what plea he should enter to the indictment?

A. No, sir, I did not.

Q. I will hand you government Exhibit No. 34 and ask you if you exhibited that pipe covered in brown paper to the defendant Robinson?

1777 A. Yes, sir.

Q. I will ask you if you did not ask the defendant, Thomas H. Robinson Jr., if he had not hit Mrs. Stoll upon her head twice with this iron pipe and if the defendant did not answer—

Mr. Hogan (Interrupting): Now wait a minute. That was a statement made before arraignment.

The Court: The objection is well taken. A statement made by the defendant before he was arraigned—

Mr. Brown (Interrupting): Well we went into that. He went into it and you let him ask the defendant Robinson if that didn't happen.

The Court: Is that the point where Mr. Hogan waived this question?

Mr. Brown: Yes.

The Court: Well, let's get the transcript. There was one point where you were advised that if you opened it up that that would be rebuttal.

Mr. Brown: Here is the transcript, on page 1242 (handing the transcript to the Court).

(After conference between counsel and the Court:)

The Court: Let the record show that the objection was sustained.

Q. I will ask you if you on May 12, 1936, did not

Testimony of Commander O. C. Dewey

1778 exhibit this pipe to the defendant, Thomas H. Robinson Jr.?

A. I did.

Cross-examination by Mr. Hogan.

Q. Mr. Dewey, were you at that time a graduate attorney of any law school?

A. No, sir.

Q. Have you ever been?

A. I have attended law school; yes, sir.

Q. You were in charge of the FBI office here in Louisville at that time—that is, May 1936?

A. Yes, sir.

Q. And most FBI Agents are attorneys, are they not?

A. Attorneys or accountants.

Q. Were you an accountant?

A. No, sir.

Q. You did not have either of those qualifications then?

A. I was not a graduate attorney.

Q. You had had some legal training?

A. Yes, sir.

1779 Q. How much?

A. About 2½ years.

Q. In what school?

A. George Washington Law.

Q. What department is the Federal Bureau of Investigation a part of?

A. The Department of Justice.

Q. How long was Robinson held in that Starks Building?

A. He arrived about noon on the 12th and brought over here about 3 o'clock of the 13th.

Q. Was he permitted to see an attorney in the Starks Building?

A. He did not want to see any.

Q. Well did he see one?

A. No, sir, he did not.

Q. You knew his past insanity record when you had him over there, didn't you?

Testimony of Commander O. C. Dewey

A. I knew about it, yes sir.

Q. And you were in charge of the office?

A. Yes, sir.

Q. And you had been to law school over 2 years? Is that right?

A. Yes, sir.

1780 Q. And you knew that we had a constitution in the United States that protected the rights of individuals and citizens. Is that right?

A. Yes, sir.

Q. And you knew that he had been adjudicated insane?

A. Yes, sir.

Q. And yet you, in charge of that office, brought him into this court room and allowed him to accept a plea of guilty without counsel, didn't you?

A. I had nothing to do with that.

Q. Well were you in charge of the office, or weren't you?

A. I was in charge of the office.

The Court: I believe when a man makes a plea that that is the Court's duty. The FBI doesn't have charge of that.

Q. Well did you tell the Judge that this boy had been adjudicated insane?

A. The Judge never asked me.

Q. Well did you tell him?

A. Well I never conferred with Judge Hamilton.

Q. You came to the court room with him, didn't you?

1781 A. Yes, sir.

Q. You knew he didn't have an attorney, didn't you?

A. I wouldn't say that.

Q. The court records disagree with you on that, don't they?

A. I don't recall what the court records show.

Q. Have you ever read the case of Robinson vs. the United States?

A. Not in its entirety.

Testimony of Commander O. C. Dewey

Q. You know in that case that it was judicially determined that he did not have counsel, don't you?

A. That is what I have heard.

Q. Didn't you feel it a sense of duty to advise the court that this man had been adjudicated insane?

A. I think that is a matter for the United States Attorney and for the Judge. I was merely an investigating officer.

Q. Were you a part of the Justice Department of the United States?

A. Of the Federal Bureau of Investigation.

Q. And a part of the Justice Department, weren't you?

A. It is a branch of the Justice Department.

1782 Q. Was it justice to bring this man in without counsel?

Mr. Brown: That is pure argument.

The Court: I believe we are getting into an argument of the case. Let the witness state the facts and you can argue it to the jury later.

Redirect Examination by Mr. Brown

Q. I will ask you if an attorney from Mr. Huggins' office by the name of Gabbard didn't call you concerning the Robinson matter and didn't you call Robinson about it and he said he did not want to talk to him?

Mr. Hogan: Objection, because the court records prove to the contrary.

The Court: I think the Court's opinion points that out, doesn't it?

Mr. Hogan: The Court's opinion said he didn't have counsel, Your Honor.

The Court: Didn't they say that Mr. Gabbard came?

Mr. Hogan: But not in the guise of counsel.

The Court: He may not have been counsel of record, but I think the Court's opinion did point out that

1783 Mr. Gabbard did come to the court room. If you wish to get the Court's opinion we can do so, but I think the Court's opinion that that did not constitute counsel of record in that Mr. Gabbard did not enter his appearance of record.

Testimony of Commander O. C. Dewey

Q. And I will ask you further if Mr. Clem Huggins wasn't in the court room and if his name didn't appear of record?

A. Yes, sir.

Mr. Hogan: Now that is just not so.

The Court: No. His name did not appear of record for the defendant. His name appears, I believe, as having taken part in the discussion.

Mr. Hogan: There is a vast difference between appearing of record and appearing as a friend of the family.

Mr. Brown: Are you telling me or arguing it?

Mr. Hogan: I am telling you.

The Court: I will instruct the jury on that, if there is any question between these gentlemen, get the opinion that details the facts. I was not here, and I don't know whether Mr. Hogan was here or not. But I have read the opinion, and it recites the facts and if you gentlemen want those facts correctly presented to the jury, we can take

1784 them from the opinion. As I recall it, the opinion said that Mr. Huggins was present and had conferred, either with Judge Hamilton or the defendant. I don't know which, but that he stated to the court in open court when called upon that he was not appearing as counsel of record for the defendant.

Mr. Hogan: That's correct.

DR. DENNIS E. SINGLETON, was called by the government as a witness in rebuttal and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. What is your name, Doctor?

A. Dennis E. Singleton.

Q. Where do you live?

A. Mendota, Wisconsin.

Q. By what concern or branch of the government are you now employed?

A. With the government.

Testimony of Dr. Dennis E. Singleton

Q. In what capacity?

A. Psychiatrist.

Q. Connected with an institution?

A. Yes, sir.

1785 Q. What type of institution?

A. Mental hospital.

Q. During the year 1936 were you connected with any branch of the United States government?

A. Yes, sir.

Q. What branch?

A. The United States Public Health Service.

Q. How long have you been with the United States Public Health Service?

A. Well I have been with them twice. I had been with them since 1931 at that time.

Q. In what capacity were you with the U. S. Public Health Service?

A. I was psychiatrist at the Federal Penitentiary at Leavenworth, Kansas.

Q. Of what schools or colleges are you a graduate?

A. University of Missouri, and the College of Medicine of Louisville.

Q. When did you graduate from the University of Missouri and then at Louisville?

A. I left Missouri in 1902 and in Louisville 1905 I graduated in medicine.

Q. Since 1905 have you continuously practiced your profession?

1786 A. Yes, sir.

Q. Have you specialized?

A. I have been in psychiatry—neuropsychiatry with the exception of 4 years since I graduated.

Q. Since 1905 you have been in neuropsychiatric work?

A. Yes.

Q. I will hand you a document and ask you to examine that and tell the jury what it is?

A. This is a report made by the various members of the Classification Committee at the Leavenworth Penitentiary.

Q. Pertaining to what person, Dr. Singleton?

Testimony of Dr. Dennis E. Singleton

A. Thomas H. Robinson Jr.

Q. Suppose you tell us while we are waiting for that your customary practice while you were at Leavenworth in 1936 of affording any inmate psychiatric examination—just your general practice on that?

A. I interviewed all the inmates that came into the institution, and many of them I did more than the regular interview. Of course, I couldn't give all of them a special examination, but many of them I did. As well as I remember we had some 275 to 200 admissions a month, and of course that was pretty heavy service. I recognize
1787 this here as my examination.

Q. I will hand you that and I will follow along with this.

The Court: Has the doctor testified about his connection with Leavenworth?

Mr. Brown: I am going to ask him that now.

Q. Now, during the year 1936, Doctor, what position did you hold with the United States Penitentiary at Leavenworth, Kansas?

A. I was a psychiatrist in the Public Health Service. The Public Health Service had the mental activities of the federal penitentiaries.

Q. And you were in charge of all mental examinations conducted by the United States Public Health Service at the U. S. Federal Penitentiary at Leavenworth, Kansas?

A. Yes, sir.

Q. Now would you refer to that report and tell the jury whether any mental or physical examination was given to the defendant, Thomas H. Robinson Jr.?

A. This examination of mine was done on the 19th day of June, 1934.

Q. 1936, I believe it is.

A. That's right, 1936.

Q. Now, just tell the jury what you found as a
1789 result of the physical and mental examinations?

Mr. Hogan: Now, if Your Honor please, that is objected to on the ground that this examination, or the result of it or the chart contains some statements made by this defendant to this doctor for the purpose of enabling

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him to make a finding and upon the same basis that these other statements were made before arraignment, they are inadmissible.

The Court: Well we won't repeat the statements which Robinson may have made to him. I don't want you, Doctor, to tell the substance of any statement he made to you, but from your observation of him, and in talking to him, I think you can give your opinion as to his mental condition. That is an issue in this case which you raised for the defense, and since that issue has been raised I think the government has the right to meet it. He is not going to give any statement of what the defendant says at all. The jury will not be permitted to hear those statements.

Mr. Hogan: If Your Honor please, I think my objection is still good because anything that—necessarily this doctor would have had to talk to him before he could have made up his mind that—as to his mental condition.

The Court: Well doesn't the rule only go to 1789 preventing the jury from having the statement the defendant made?

Mr. Hogan: Yes, sir.

The Court: All right. I have just told the doctor not to tell the jury any statement which the defendant made.

Mr. Hogan: But the point is that he could not formulate his opinion until he had talked to and got some statements from the defendant.

The Court: He could talk to him. He doesn't have to repeat what the defendant said. From his conversation with him he could determine something about the sanity of this defendant. Of course the defendant is not going to be able to claim that he was insane at that time and then prevent any witness who saw him at that time from testifying that he was sane. That would be a most unusual position for the defendant to contend for.

Mr. Hogan: Your Honor, our objection is not done for the purpose of precluding that. We are willing to have the testimony, of course, upon the sanity or insanity, but this statement, as I have said before, does contain some statements and, therefore, that was the first objection.

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The Court: You understand, Doctor, don't repeat to the jury anything that this man said to you.

1790 Q. Omit from your testimony, Doctor, any statements that the defendant Robinson made to you. Of course you can have in your own mind any statements that he may have made to you?

The Court: Not as to the truth of those statements or untruth but as to bearing on his mental capacity, sanity or insanity.

Q. With reference to the medical report, Doctor, will you tell what your examination—

A. (Interrupting) There is a separate mental report here.

Q. No. First I want to get the physical examination before I get the mental.

A. All right. That is the one just before the mental report.

Q. Let's be sure that we are looking at the same report; 2 (b) medical report, physical examination. That's right.

A. Yes.

Q. Now omit any statements Tom Robinson made to you, tell the jury what you found out as a result of that physical examination?

A. He appears to be in good physical condition. He is well nourished and well developed.

1791 Q. Did you notice any physical defects, Doctor?

A. No. There are none recorded. His vision is 20/20 in the right eye, and 20/50 in the left eye. His tonsils had been removed. You just want the positive findings.

Q. Yes?

A. The only thing I see abnormal here is defective vision in the left eye.

Q. Now with reference to the neuropsychiatric report, will you refer to that and tell the jury what you found abnormal?

A. There is nothing abnormal neurologically.

Q. What do you mean by that?

A. Neurological examination—that is the pupillary re-

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action, etc. It is connected perhaps more with the physical than the mental examination.

Q. All right now doctor and tell the jury about that?

A. He has the mental age 18.3 and he has an I. Q. of 114.

Q. Now tell the jury what that means?

A. This is a revision of the Simonbinet test that we were giving to all inmates at that time.

Q. Now what did he get from that test?

1792 A. An I. Q. of 114. 100 is supposed to be the average adult intelligence. This is above.

Q. Would you call it a good performance, fair performance or an excellent performance?

A. I would call it an excellent performance. This report shows here that he does a better than normal test throughout the performance.

Q. What type of manual performance did he show?

A. He showed a high degree of attentiveness and alertness during the entire procedure. He shows a rather good manual performance and is capable of rather intricate industrial work.

Q. Now with reference to the next paragraph, would you tell the jury with reference to your neuropsychiatric report?

A. Yes. You see when these men come in we have a history of them. There is an extensive neuropsychiatric report which accompanies this case, and it appears to be little, if anything, of importance to be added. Now that is a report that goes along with him there and I didn't see any use of copying that.

Q. Just go ahead and state what this shows?

A. "His stay here has been uneventful. He has been observed daily by the medical staff, and nothing unusual has been noticed. He is fairly cheerful, responsive, and in excellent touch with his surroundings, and has made a good adjustment in segregation."

1793 Q. Will you read the rest?

A. "He is pleasant. During this interview he responded relevantly and coherently. He is very respectful, polite and agreeable. Emotionally it could not be said that

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he is depressed, but he is by no means facetious or euphoric."

Q. What do you mean by "euphoric"?

A. Over talkative. Happy. "He understands perfectly well his situation and consequently would not be cheerful. There is nothing whatsoever to indicate that he—"

Mr. Hogan (Interrupting): Now back up there just a minute, Doctor. Shouldn't that be "should not be cheerful"?

Witness: " * * * And consequently should not be cheerful." That's right. It was in keeping with his situation.

A. (Continuing) "There is nothing whatsoever to indicate that there is any mental illness present at this time. Some five years ago—" Do you want me to read that part of it?

Q. It is all right with me if it is all right
1794 with Mr. Hogan.

Mr. Hogan: Read down to the next period.

Witness: Stop at the next period?

Mr. Hogan: Maybe you had better stop there because it follows up with a statement beginning with, "he said."

Q. All right. Now suppose you start down where it says, "This young man gives the impression * * *"

A. "This young man gives the impression of an apparent constitutional lack of responsiveness to social demands, truthfulness, decency, consideration of others, regard for sexual mores, and generally he is thoroughly asocially conditioned."

Q. Now what do you mean by "asocially"?

A. A disregard for people and untrustworthy. I would say perhaps would be the best thing.

Q. All right, go ahead.

A. "He is unable to profit by his experience in which he has been relatively privileged and punished. He lacks continuity of purpose on a domestic, occupational, and social level. All of which definitely shows that he is a constitutional psychopathic, inferior, with criminal instincts, irresponsible, hyper-sexual activities, and emotional

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instability."

1795 Q. Go ahead with the next paragraph?

A. "He is egotistical, over-estimates his ability to a very great extent. He has an exaggerated disrespect for the property rights of others. His attitude to his present environment is apparently good. His attitude toward society and the law is obviously one of disregard and lack of interest."

Q. Doctor, as a result of your medical examination, and your training, I will ask you if, in your opinion, this defendant knew right from wrong?

A. Yes, sir.

Q. I will ask you if, in your opinion, he was capable of distinguishing between right and wrong and realized fully the consequences of any deliberate act?

A. Yes, sir.

The Court: That is, at that time?

Mr. Brown: Yes.

The Court: That was in June 1936?

Witness: Yes, sir.

Cross-examination by Mr. Hogan.

Q. What is psychosis?

A. Insanity. That is the medical term.

1796 Q. It means disease of the mind?

A. That is right.

Q. What is psychopathic personality?

A. Psychopathic personality does not imply psychosis. It is an abnormal behavior manifesting in the volitional and emotional field, I should say, with many different types, many abnormal types of behavior.

Q. That latter term is an unsatisfactory and unscientific diagnosis, is it not?

A. I wouldn't say—we all have a very definite idea when we talk about psychopathic personality, and a psychiatrist does. I do not think it is unscientific. I think we know very definitely what we mean by it.

Q. There is really no agreement on the classification of these types of personality?

A. Yes there are many different types of the manifes-

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tation of a psychopathic personality.

Q. Kleptomania comes in that classification.

A. Yes.

Q. And Pyromania?

A. Yes.

Q. Alcoholic comes within that classification, too, I believe?

A. Some of them do. With part of them it is a
1797 psychopathic personality.

Q. These psychopathic personalities are usually hereditary, are they not?

A. I wouldn't say that.

Q. You don't think so?

A. I would not say it is altogether.

Q. Sometimes?

A. It might be a factor in their psychopathic personality. We know many of them that we can't find any hereditary taint with them.

Q. Does a psychopathic personality ever change?

A. Not a great deal.

Q. They either stay in the same trend or they get worse?

A. We have exacerbations at times.

Mr. Brown: What does that mean?

Witness: Well they will be fairly normal at times, at one time, and at another time they will be quite abnormal. They vacillate—they change from time to time. Their habitual pattern, however, is more or less continuous.

Q. They are a type that are never cured?

A. I never knew one to be cured.

Q. If it should be established that Tom Robin-
1798 son Jr. was cured, then would you say that your diagnosis was incorrect?

A. Yes.

Mr. Brown: Objection for this reason, because the doctors he has put on have testified that he was cured if he ever had a dementia praecox. Now this doctor says that he is not a dementia praecox and in fact he is not insane. He is sane.

Mr. Hogan: Yes but he said he was a psychopathic

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personality, too; and I asked him if psychopathic personalities were ever cured, and he said no.

The Court: All right go ahead.

Q. Now then, Doctor, was your answer to my other question still yes?

A. What was the question?

(The question was read to the witness as follows:)

"Q. If it should be established that Tom Robinson Jr. was cured, then would you say that your diagnosis was incorrect?"

A. Cured of what?

Q. Cured of psychopathic personality?

A. He won't be cured.

Q. He won't be?

A. Not of a psychopathic personality.

1799 Q. Well, assuming that he is, would your diagnosis be wrong?

A. I will not accept such an assumption.

Q. You are an expert, aren't you?

A. I leave that to my colleagues.

The Court: He has told you what his experience is. The jury may judge his qualifications from his experience.

Q. Well did you ever make a wrong diagnosis?

A. Oh yes, yes, yes. Very definitely so.

Q. Well if Tom Robinson Jr. is not a psychopathic personality, now would you say your diagnosis in 1936 was incorrect?

A. Yes.

Q. Now after you made that examination, Tom didn't stay in Leavenworth very long, did he?

A. No, not very long.

Q. Where did he go?

A. Alcatraz.

Q. Where is that?

A. On the Pacific Coast.

Q. What is it?

A. A prison.

Q. A federal prison?

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1800 A. Federal, yes.

Q. It is known as "the rock," isn't it?

A. Yes.

Q. Way out there in the San Francisco Bay?

A. I have never seen it, but I understand it is, 20 miles out.

Q. It isn't a very pleasant place, is it?

A. I have never been there, I wouldn't know.

Redirect Examination by Mr. Brown.

Q. Doctor, how much experience have you had in prison institutions?

A. Eight years.

Q. From your experience of dealing with inmates, what percentage of the prison population is made up of psychopathic personalities?

A. That would be a pretty hard thing to say. A good percent, however.

Q. Would you hazard, in your best judgment, what percent?

A. Well I would hazard a guess of definitely maybe 20% or 25%—20%.

1801 Q. Now is there a government institution where those persons who have been convicted of crime and then become mentally ill are sent?

A. Yes, sir.

Q. Where is that?

A. Springfield, Missouri.

Q. Now if there had been the slightest doubt in your mind that the defendant Robinson was not entirely sane, where would you have sent him?

A. I would have called for a Board on him, and we would have had a board and that would be recommended that he go to Springfield, Missouri.

Q. Now have you had occasion, in the years that you have been in prison work, to send many or few to Springfield?

A. I think, as well as I remember, in my eight years there that we have sent pretty close to 200 to Springfield from that one institution.

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Q. That in your opinion had become mentally ill since their sentence?

A. Yes, sir.

Recross-examination by Mr. Hogan.

Q. Of course, if your diagnosis had been wrong,
1802 or if you believed it was, you would have sent him to Springfield?

A. If I had thought he was a mental case or had a psychosis I would have recommended him to go to Springfield, and I have never had one who was not sent after we recommended it.

Q. Of course you still say you made an improper—

The Court (Interrupting): You don't need to repeat that, I don't think.

Mr. Hogan: All right doctor, that's all.

The Court: Members of the jury, we will take a short recess. Do not talk about this case among yourselves, or with anyone, or allow anyone to talk about it in your presence. We will recess for five minutes.

After recess the following proceedings were had:

Mr. Brown: I want to introduce into evidence that copy of Dr. Singleton's report.

Mr. Hogan: Of course, I am going to object to that because if it goes into evidence the harm will be done.

Mr. Brown: Of course, I am not going to refer to it any further. I just want it for the purposes of the record.

The Court: I think you have got into the record what the doctor said, haven't you?

Mr. Brown: Yes, I suppose.

The Court: All right. Objection sustained.

1803 DR. R. M. RICHEY called as a witness in behalf of the Government, in rebuttal, being duly sworn, was examined by Mr. Brown and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Dr. Richey—Dr. R. M. Richey.

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Q. Now, Dr. Richey, I wish you would talk a little louder so that all the members of the jury can hear you. Your name is Dr. R. M. Richey?

A. That's right.

Q. Where do you live, Doctor?

A. I live at Alcatraz, California.

Q. What position do you hold, Doctor, at Alcatraz?

A. I am the chief medical officer at the penitentiary there.

Q. How long have you been chief medical officer?

A. Since May of 1938.

Q. Of what schools or colleges are you a graduate, Doctor?

A. I graduated from Rush Medical College in Chicago, in 1904.

Q. Since 1904, have you practiced continually your profession?

1804 A. With the exception of about a year or so immediately after leaving school, I have been occupied with psychiatry.

Q. Have you specialized?

A. Yes, sir.

Q. In what type of work?

A. Nervous and mental diseases.

Q. Are you attached to the United States Public Health Service or are you attached to the Bureau of Prisons?

A. United States Public Health Service.

Q. How long have you been with the United States Public Health Service?

A. Since 1931.

Q. Where have you been stationed since 1931?

A. I was stationed at McNeill Island Penitentiary from 1931 to 1938.

Q. From 1938 to date you have been at Alcatraz?

A. That's correct.

Q. As chief medical officer, do you have custody of all medical records at Alcatraz pertaining to any of the inmates?

A. I do.

Q. I'll hand you this record and ask you to examine

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and tell the jury whether those records are the records of the United States Bureau of Prisons, Department
 1805 of Justice, covering the defendant, Thomas H. Robinson, Jr.?

A. Yes, sir.

Q. When a man reaches Alcatraz and he has been at other federal institutions and is transferred to Alcatraz, I will ask you if all prior medical records do not accompany him to that institution.

A. They do.

Q. Have you in your possession the reports of examination, both mental and physical, covering the defendant, Thomas H. Robinson, Jr., in Atlanta, Leavenworth and Alcatraz?

A. I have.

Q. Now Doctor, without detailing any conversation that you had from the defendant Robinson, would you refer to your physical and mental examination and tell the jury from your records what that is?

The Court: You mean one that the witness made himself?

Mr. Brown: Yes, the one you made, Dr. Richey.

The Court: When did you make it, Doctor?

The Witness: In July of 1939 this summary was made. I think you have copies of that.

Mr. Brown: Yes, sir.

A. You want me to read the physical examination?

Q. Now just your own examination, mental and
 1806 physical, and pointing out any mental defects or physical defects, but don't tell to the jury any information you obtained from this defendant himself.

A. Well, he was a well nourished white man of thirty-two at that time, looks robust, claims good health, history of pneumonia as a child, tonsils had been removed, many teeth were missing, heart action was normal, lungs were clear; neurological was negative; Wasserman was negative.

Q. When you say Wasserman negative, what do you mean?

A. That is blood examination for syphilis.

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Q. Shows the absence of syphilis?

A. That's right.

Q. All right, go ahead.

A. The mental examination showed he was clear and well oriented, had a good memory, no disturbance of consciousness, gives a history of a mental disorder in 1929, but no psychotic symptoms are present now, and I refer to his own statements here.

Q. We want to omit his statements. Just tell from your examination of him.

A. There are no paranoid tendencies noted, the reasoning ability and judgment are not affected, his affect is perhaps a little flat although he is friendly and
1807 courteous and shows no great change in mood. The other statements refer to things which he said.

Q. We want to omit that from reading to the jury. Tell the jury your diagnosis of his condition, if you did make a diagnosis?

A. I made the diagnosis of a constitutional psychopathic inferiority, mostly inadequate. His I. Q. was 118.

Q. Now when you say constitutional psychopath, what do you mean by that, Doctor?

A. Well, I mean he belongs to one of the particular type of personalities that exhibits certain tendencies toward unusual conduct reactions which show an inability to adjust himself to social requirements, usually, not always, and also show emotional reactions which are sometimes inadequate or overly strong.

Q. Was the defendant as of the date of your examination, which I think you said was in 1939, was it?

A. Yes, sir.

Q. Did the defendant in your opinion know right from wrong?

A. Yes.

Q. Was he a person who was capable of distinguishing between right and wrong and realize the consequences of his own deliberate acts?

1808 A. Yes.

Q. Did he have any psychosis of any kind?

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A. No.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Dr. Richey, what do you mean by the term psychosis?

A. Insanity, perhaps—it is a general term—will cover it.

Q. It means a mental disease, doesn't it?

A. It means a mental disease.

Q. You have already explained your definition of psychopathic personality.

A. Yes.

Q. Do you have psychosis with a psychopathic personality?

A. There is undoubtedly cases who are psychopathic personalities who do develop psychosis on top of it, that is true.

Q. Psychopathic means what, Doctor?

A. It doesn't mean anything very definite or that can be stated in very clear terms. It is a kind of—it is a
1809 type of person, that's about as far as I could go without fear of contradiction.

Q. In other words, it is a waste-basket type of diagnosis.

A. Well, no, I wouldn't call it that exactly. It represents something rather definite, but difficult to explain in certain terms.

Q. When you are unable to determine upon a particular type, you usually class them as psychopathic personality.

A. No, I wouldn't say that. You first determine whether there is a psychosis present, and if there is and we can't distinguish it or name it, we leave the diagnosis as undetermined. It is a psychosis undetermined.

Q. A pyromaniac would be a psychopathic personality.

A. It could be, I guess, but I wouldn't say that he is. He might be something worse.

Q. What is a pyromaniac?

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A. A man that likes to set fires, I think.

Q. That's true, but I mean what classification does he come under?

A. I wouldn't be able to say unless I could examine him and see why he liked to set fires, a good many angles to it.

Q. Would a fire bug be a dementia praecox?

1810 A. He might be a dementia praecox. He might be an obsessive neurosis.

Q. A little bit louder, Doctor?

A. He might be a case of obsessive neurosis, has compulsive ideas and things of that kind.

Q. Obsessive ideas?

A. Yes, sir.

Q. You mean by that, he would be obsessed with some particular idea?

A. In that case he would be obsessed with the idea that he had to set fires, or that he should set fires. There might be many motives for setting fires besides that, of course. I wouldn't say offhand what any particular pyromaniac was without examining him.

Q. Suppose one of these other types of psychopathic personalities would get obsessed with some different idea, would they be classified in the dementia praecox type?

A. I think not.

Q. You think the fire bug would, but—

A. Might.

Q. But the others obsessed with some other ideas would not, but he might.

A. He might.

Q. But if he were, would he be a dementia praecox?

A. I don't think I could give you a true answer
1811 to that question without having more factors brought into the picture, and I don't think I would wish to state.

Mr. Brown: The jury is having a good deal of difficulty hearing you, Doctor. You will have to hold your voice up.

Q. Let's take this example, that we have one of these religious men or men with religious ideas, that he is obsessed with the idea that he has to go out and take up

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where some of the Biblical characters left off. Would that type of man be a dementia praecox?

A. I don't think you could say whether he was or not without having other features brought out. Religious ideas are pretty prevalent and the extent to which they may go before they are looked upon as abnormal is a ticklish question, and we allow people pretty wide latitude in expressing their religious beliefs without question.

Q. Well, let's take this example and see where we can go with it. Suppose one of these religious fanatics, we will call them, or a man obsessed with religious ideas, was obsessed with the idea that he was the reincarnation of Moses, a Biblical character. Would that type of person be in your opinion a dementia praecox?

A. Not with that single identification, I don't think I would make a diagnosis.

Q. Let's assume further, that he believed him-
 1812 self or was obsessed with the idea that he was Moses, and that he did some of the things that we have read about in the Bible that Moses is supposed to have done. Would you say that he was a dementia case?

A. If his belief was so strong that it took him out of reality, so that he lost touch with his actual environment, I would certainly say that he had some sort of a mental disorder, yes. I don't know that I would still be willing to say that it was dementia praecox.

Q. You would say that he had some mental disorder, though.

A. Yes.

Q. If that idea of Moses were entrenched in his mind and he carried it into action, and although he had in his subjective mind—rather, that he did have in his subjective idea the idea to go upon the mountain and write upon the tablets, and that he couldn't control that idea and went upon some mountain or simulated mountainous topography, and believed himself to be carrying into effect Moses' ideas—would you then say that that type of person was a dementia praecox?

A. No, I don't believe that religious fanatics are all dementia praecox.

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Q. What types are dementia praecox?

A. Religious ideas, of course, become mixed up
 1813 in a good many psychoses, depending upon the background and culture of the individual, but to say that extreme religious beliefs are evidence of psychosis I do not think it is justifiable. Many people have strong religious beliefs who conduct themselves entirely within social restrictions and do not interfere in any way with their neighbors or their fellowman and they are allowed to hold their religious beliefs and practice them without interference or question.

Q. Well, Doctor, let's take this type of situation and assume that a person is obsessed with ideas, whether they be religious or otherwise, and does not have the control over his will to assist carrying into action those desires, wouldn't that be a typical case of dementia praecox?

A. Well, you say that he does not have the will to do anything else; I don't believe that's the case. He has a very strong will to actually do the things that he is doing. The reason he can't resist them is because he doesn't want to resist and he will perhaps be able to justify them to you and explain in great detail why he doesn't, and if they are consistent I still would say he is entitled to do them.

Q. Let's assume that there is such a situation where a person is imbued with the idea that he has gotten out of his subjective mind, and imbued with it to the extent
 1814 that he just carries it into effect without any control over willpower. Now we are assuming that his will power is destroyed, now. Would you say that that type is a dementia praecox?

A. Very likely he would be, or at least some deteriorating psychosis.

Q. He would either be a dementia praecox or a deteriorated mentally diseased person.

A. Yes.

Q. What about these psychopathic personalities, is that a hereditary condition?

A. I think there are perhaps more environmental factors in the production of that personality than there are hereditary, although both are doubtless concerned, and

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there is no hard and fast rule on that, there is no universal agreement even among psychiatrists as to the exact cause of a psychopathic personality, but the tendency is to feel that a large portion of it, at least, is environmental and it develops after birth.

Q. Usually in young children, I believe, when it first manifests itself?

A. Yes.

Q. I believe you are in agreement that psychopathic personalities are never cured.

A. They can be improved.

1815 Q. Are they ever cured?

A. Probably not.

Q. That is your expert opinion on that, is it not?

A. Yes.

Q. Then Doctor, if it is established that a person is cured when he once was diagnosed as a psychopathic personality, the fact that he is cured would disprove the original diagnosis, would it not?

A. Yes, to a large extent, at least.

Q. Doctor, how many inmates do you have in Alcatraz usually, on an average?

A. In the neighborhood of three hundred.

Q. Is that a fairly large building out there?

A. Oh, it is a fairly large building, yes.

Q. It is a federal prison, of course.

A. Yes.

Q. Sits up high on a rock?

A. It does.

Q. Any of them ever get away from there?

A. I don't think so.

Q. Some of them have tried it and failed, haven't they?

A. A good many of them have tried it.

Q. What surrounds the rock, as it is sometimes known?

1816 A. It sets in a bay, San Francisco Bay, about a mile and a half from the shore.

Q. Shark infested waters, is it not?

A. No, I don't think there are any sharks in there.

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Q. Any man-eating whales, or do you know?

A. I have never seen one.

Q. How do you get from the mainland onto this island?

A. The Government runs its own launch back and forth.

Q. Isn't there a boat that carries freight cars and passenger cars over there?

A. No. That train ferry doesn't stop at our place.

Q. Passes you up.

A. Yes.

Q. Is the discipline rather strict there?

A. Well, the custody is pretty close, yes. It is a maximum custody institution and every effort is made to supervise and control every hour of the day for every inmate, that's true.

Q. What is maximum custody?

A. That's the greatest degree of custody possible.

Q. Straight-laced custody?

A. Oh, no. No, no.

The Court: Does this have any bearing on the 1817 issue we have in this case?

Mr. Brown: I wouldn't think it has.

Mr. Hogan: I think so, Judge.

The Court: What issue does it bear upon?

Mr. Hogan: It bears upon the man's mental condition.

The Court: Back in 1934?

Mr. Hogan: No, in 1939, we will say.

The Court: We are interested in what his mental condition was in 1934.

Mr. Hogan: Judge, I must remind you that if we are, this witness is incompetent because he didn't see him until 1939.

The Court: How about the witnesses you had this morning who didn't see him until 1943?

Mr. Hogan: They were giving an opinion.

The Court: You mean it bears on his condition when this witness examined him, is that what you are trying to bring out?

Mr. Hogan: No, Judge, I am trying to find out the type of discipline there as it affects this—

Testimony of Elmer G. Allen

The Court: You mean, affecting it after he got there?

Mr. Hogan: Yes.

1818 The Court: I think it might have a bearing on his condition at the time when this witness examined him after he got there. If you are bringing it out for that purpose—

Mr. Hogan: I might state, I do not desire to pursue it at great length. I just want to establish it fairly reasonably. If Your Honor says to discontinue, I will do so.

The Court: You brought out most of the facts. I don't know that it is necessary to go into details, is it, of what Alcatraz is. It is a federal institution with maximum supervision, he says.

Mr. Hogan: I am willing to rest with this witness right now. He made a very good witness.

ELMER G. ALLEN called as a witness in behalf of the Government, in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury, please, sir.

A. Elmer G. Allen.

Q. Where do you live, Mr. Allen?

A. 2745 Alford Avenue.

Q. Here in the City of Louisville?

A. Louisville, Kentucky.

1819 Q. Where are you employed?

A. Reynolds Metals.

Q. During the year 1931, particularly May, June and July, 1931, where did you live?

A. I was at Beechwood Inn.

Q. Where is that located?

A. It is about three miles south of West Point on the Dixie Highway.

Q. Would you tell the jury at the time you were there in May, June and July, what was on those premises?

A. There was one big building, all under one roof, a

Testimony of Elmer G. Allen

dance hall, and a small restaurant in front and a bar, and a small kitchen on one side, and on the other side a very small check room. Then at the back, at the North end, in the rear, was a garage two story and there were three rooms upstairs, one about 12 x 14 and two very small rooms.

Q. During the time, during May, June and July, that you were at the Beechwood Inn, were there any tourist camps or cabins of any description on those premises?

A. No, sir.

Q. What people lived there at the Beechwood Inn?

A. My family, my wife and myself, my daughter and her husband, occupied the front room, and my single boy, and about four weeks of that time my other married
1820 daughter slept in one of these little rooms upstairs.

Q. Did one of your children have a child while you were there?

A. Yes, sir. My youngest daughter gave birth to a child, a boy, on the 11th of July, upstairs in this front room.

Q. Now, at any time that you were there during May, June and July, 1931, did you at any time rent any space in any of those buildings, or did anyone outside of the members of your immediate family, occupy any space on or in those buildings?

A. No, sir; absolutely not.

Q. Now, how long did you remain there, Mr. Allen?

A. I left there the first part of August.

Q. Were the premises purchased by anyone?

A. Yes, sir. Mr. Palmer bought the property from Carlisle.

Q. And you left there, to the best of your recollection, at what time?

A. I left there, if I am not mistaken, on a Saturday night after I had a dance in the night. I loaded up what stuff I had, I didn't have but very little stuff because my furniture was all here in Louisville, and I came back here to Louisville.

Q. Was that the last Saturday in July or the
1821 first Saturday in August?

A. I won't say, but I believe it was the first Sat-

Testimony of Edward S. Palmer

urday in August, I am not positive about that.

Q. When were you first interviewed about this by any member of my office or the FBI?

A. Night before last.

Mr. Brown: You may ask the witness.

Mr. Hogan: No questions, Mr. Allen.

EDWARD S. PALMER called as a witness in behalf of the Government, in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Edward S. Palmer.

Q. Where do you live, Mr. Palmer?

A. Atlanta, Georgia.

Q. During the year 1931, where did you live?

A. Springfield, Tennessee.

Q. Had you ever lived in Louisville, Kentucky?

A. Yes. When I was quite a few years back.

Q. In 1931, did any members of your family live in Louisville, Kentucky?

1822 A. Yes, my mother and father.

Q. Did you have occasion on many or few occasions to come from Tennessee to Louisville, Kentucky?

A. Practically every week.

Q. How did you usually come from Tennessee to Louisville, Kentucky?

A. By car, in every case.

Q. Over what roads did you travel?

A. Dixie Highway.

Q. What business were you in, in Tennessee?

A. Tourist court business.

Q. What was the name of the camp that you owned in Tennessee?

A. Camp Squirrel Lodge.

Q. Where was that located?

A. That's located on 41, ten miles South of Nashville.

Testimony of Edward S. Palmer

Q. Now, directing your attention to the year 1931, I will ask if in the middle of the year 1931, you bought the Beechwood Inn.

A. Yes, sir; I did.

Q. I'll show you an original contract and ask you to examine the contract and tell the jury whether that is the contract that you executed to purchase the Beechwood Inn.

1823 A. Yes, this is the contract. I handled it myself.

Q. What is the date of that contract?

A. 13th day of July, 1931.

Q. Now, prior to the 13th day of July, had you seen or visited the Beechwood Inn?

A. Yes, sir. I had been watching that piece of property for several months prior to the time of purchasing it.

Q. During what time of year did you first become acquainted with that piece of property, then known as the Beechwood Inn?

A. The first time that I stopped and looked at the property was in early spring.

Q. When you say early spring, do you mean March or April?

A. March or April.

Q. Of 1931?

A. That's correct, and the ground was perfect for the purpose for which I wanted it, but I could not tell about the trees at that time, how many of them were living and how many of them were dead, so I didn't make any move until the trees did all leave out.

Q. When did you first go on and examine the structures that were on that piece of property?

A. Just prior to the 13th of July, possibly the 1824 day before.

Q. Now I will ask you to tell the jury when you examined that, what structures were on the Beechwood Inn premises?

A. The only structures that were on that property was the building, the front of it they were using for a restaurant, the back of it they were using for a dance hall, and the garage that was on the North side of the

Testimony of Edward S. Palmer

building.

Q. I will ask you to tell the jury if at the time you examined those premises, there were any tourist camps of any description or any cabins, tourist cabins, of any kind, character or description on those premises.

A. Absolutely none.

Q. After you had purchased that property, when did you move in?

A. I purchased it on the 13th day of July and we went to the bank to have the agreement notarized, and Mr. Ballinger who was a notary was out of the city. I returned to Springfield and made another trip back to West Point on July 21st.

Q. 1931?

A. 1931, at which time the agreement was executed and notarized, and I again returned to Springfield, coming back to West Point—Oh, within a week or ten days
1825 after the first of August.

Q. Now, sometime after you had purchased that property, did you make any arrangements to build any tourist cabins or places to rent to tourists on that property?

A. I did.

Q. When did you first start, or when did you first purchase any materials to be used in the building of tourist cabins or a tourist camp?

A. Along the last part of August.

Q. 1931?

A. 1931.

Q. Where did you purchase the material from?

A. The cement from the Kosmosdale Cement Company, the brick from the West Point Brick Company.

Q. How soon thereafter was the erection of these cabins started?

A. We started erecting them immediately after we started buying the material?

Q. Which was August of 1931?

A. Yes, sir, the last part of August.

Q. I'll show this ledger, and ask you to examine that and tell the jury whether that ledger was kept in the usual

Testimony of Edward S. Palmer

course of business.

A. That's correct.

1823 Q. Was it in the usual course of such business to keep such a ledger?

A. Absolutely.

Q. The entries therein, were they made contemporaneously with the transaction that was had?

A. Yes, sir, that is correct.

Q. Would you examine that ledger and tell the jury when the first tourist camp or cabin—when the first tourist cabin was occupied on those premises?

A. On October 12th there was one room rented.

Q. What year?

A. 1931.

Q. At any time, did you change the name of those premises from the Beechwood Inn to anything else?

A. Yes, sir. We changed it to Beech Grove.

Q. Beech Grove Tourist Camp?

A. That's right.

Q. I'll show you a picture which appears—the sign, "Beech Grove Camp, Cafe, Falls City Extra Pale Lager," and ask you to examine that and tell the jury when you changed the name of your place from the Beechwood Inn to the Beech Grove Tourist Camp.

A. We changed that name just prior to the time that we opened.

Q. That was in what month, what year?

1827 A. That was in August, 1931.

Q. Now I'll show you these pictures and ask you to examine that picture, and tell the jury whether that truly and accurately reflects the condition of the building that you testified was on those premises when you purchased it, July 13th, 1931.

A. The only change in this building was made by us, and the single door that was in the side of this building was changed to French doors; otherwise, that building was just as it stood.

Q. Now, with the exception of that building and the adjacent garage, to your own knowledge, can you tell this jury whether there was any other place on those grounds

Testimony of Edward S. Palmer

that could be occupied as living quarters?

A. No, sir.

Q. Who stayed there in those premises?

A. You mean prior to my purchase?

Q. No, Mr. Allen has already testified to that. At the time you purchased and moved there, who was there?

A. Mrs. Palmer, my four children and myself stayed there from the time we took it over until up in September when we returned to Springfield.

Q. At any time did you rent any space of any kind, character or description to anyone prior to the erection and occupancy of one or more cabins in October, 1931?

1828 A. In one case, late one afternoon, there was an old Model T Ford pulled in with Montana tags on it. There was a man in there possibly seventy years old with a girl, who he said was his daughter, that asked permission to pitch a tent for the night. They are the only people outside of my own family that stayed on the ground over night during the construction.

Q. And the first cabin by your records was occupied for the first time on what date, did you say?

A. October 12th, 1931.

Q. I'll show you two additional pictures and ask you to tell the jury what those pictures are.

A. One of the pictures is a view of the front dining room after we furnished it, and the other one is a portion of a banquet room which was constructed in 1932.

Q. In your trips from Tennessee to Louisville as the operator and proprietor of a tourist camp or cabin, will you tell the jury if there was any other spot from Kentucky to Tennessee on the Dixie Highway that was known as the Beech Grove Tourist Camp?

A. No, sir, I don't know of another one.

Q. On the Dixie Highway between here and Elizabethtown, are you able to tell the jury of your own knowledge whether in the year 1931, other than your place, was there any camp known as the Beech Grove Tourist Camp?

1829 A. Not that I know of.

Q. How many times have you been over that road in 1931, Mr. Palmer?

Testimony of Edward S. Palmer

A. The average of every week.

Q. Mr. Palmer, when were you first interviewed in this matter?

A. Last Monday night about midnight.

Q. About midnight?

A. Yes, sir.

Q. Where were you interviewed?

A. Atlanta, Georgia.

Q. Now Mr. Palmer, have you seen your former location in recent days or weeks?

A. Went down there day before yesterday.

Q. Is the Beech Grove tourist camp that you owned in existence now, or is it a part of the Fort Knox military reservation?

A. I understand that all of that ground was taken in by the Government and that place has been completely torn down.

Q. Has there been in the last year and a half or two years, a new tourist camp erected which is now known as the Beech Grove Tourist Camp?

A. Yes, sir, coming on in to Louisville, on the same highway, on the righthand side, there is a place
1830 called the Beech Grove that's operated by Mr. Carlisle.

Q. And was it Mr. Carlisle that you bought this place from?

A. That's correct, and sold it back to him.

Q. Now, from your own knowledge and from your knowledge of the tourist camp business, can you tell the jury whether or not this new Beech Grove tourist camp which is closer to Louisville, has not been constructed within the last twelve to eighteen months.

A. I can't give you the time of construction of that particular place.

Q. Approximately, from your examination—

A. It has been since the other was dismantled.

Q. Which would be in the last two years?

A. Yes, sir.

Mr. Brown: You may ask the witness.

Testimony of Edward S. Palmer

Cross-examination by Mr. Hogan.

Q. May I see your book, sir.

A. Yes, sir.

Mr. Hogan: Will the court indulge me a minute or two to look at this. The writing is rather fine on it.

Q. Now, Mr. Palmer, suppose you turn to this register or whatever it is, and tell this jury the names 1831 of registrants in that book.

A. The names of all the registrants are not in this book. This is not a register; this is a ledger.

Q. That is your financial ledger, is it not?

A. Yes, that is correct.

Q. There is not an automobile license or the name of a person in there, is there?

A. This is not the register; this is the ledger.

Q. You say you came that road several times?

A. I did what, please, sir?

Q. You came over that Dixie Highway several times?

A. Absolutely.

Q. Once a week?

A. Once a week. I come up every week-end to see my parents.

Q. Are there any tourist cabins or camps in a grove other than this place that you say you purchased between here and Elizabethtown?

A. You mean now?

Q. Or was there then, in 1931?

A. The only tourist camps that I can call in mind at all that was on that highway at the time that I purchased this property was one out on the Dixie Highway just a little distance out of Louisville, on the righthand side of the road, that was called Dixie. Just beyond that, I 1832 would say three or four miles, was another one, the name of it I don't recall, but I remember they were very small, frame houses, built up on posts. Neither one of those, as I remember, being in a grove.

Q. Is that all you recall as to tourist camps between here and Elizabethtown?

A. That's the only ones I remember being on that

Testimony of Edward S. Palmer

highway. Of course, I wasn't interested in any camps that were up. I was interested in a spot for another one.

Q. Did you keep a register of persons who registered at your tourist camp?

A. We always kept a register for one year.

Q. Where is that register?

A. They have been destroyed. We destroyed all of those registers after a year's time.

Q. So what you have brought into court is merely a ledger of what the material cost you and what you took in.

A. That's correct.

Mr. Brown: I would like to show these pictures to the jury.

(The pictures were passed to the jury.)

MRS. EDWARD S. PALMER was called as a witness in behalf of the Government, on rebuttal, and being
1833 duly sworn, was examined and testified as follows:

Q. State your name to the jury.

A. Mrs. Edward S. Palmer.

Q. Where do you live, Mrs. Palmer?

A. I live in Atlanta, Georgia.

Q. During the year 1931, where did you live?

A. In Springfield, Tennessee.

Q. At that time did your husband own any tourist camps near Nashville?

A. Yes, we owned one, South of Nashville.

Q. During the year 1931, did you have occasion on many or few occasions to come to Louisville, Kentucky?

A. Very often, particularly on week-ends.

Q. How would you come to Louisville?

A. In the automobile.

Q. Over what road?

A. Well, the Dixie Highway.

Q. When did you first notice and become acquainted with the Beechwood Inn?

A. Well, during those trips to Louisville, in the early part—the latter part of the winter or the early part of the

Testimony of Mrs. Edward S. Palmer

spring.

Q. When were you married to Mr. Palmer?

A. In February of 1931.

Q. And it was subsequent to your marriage to
1834 Mr. Palmer that you came to Louisville?

A. No, it was afterwards.

Q. Yes, after your marriage to Mr. Palmer.

A. Yes, that's right.

Q. That you came to Louisville. When did you first notice this Beechwood Inn?

A. Well, I don't know exactly, but it was on our trips to Louisville that we talked it over.

Q. When did you first examine any structures on the grounds on which the Beechwood Inn was located?

A. Well, the early part of the summer.

Q. Will you tell the jury what was on the grounds at that time?

A. One large structure, the front part of it was a restaurant and the back part of it had evidently been used for a dance hall, it was just a great big open place with a piano at one end, as I remember it, and some benches around the walls.

Q. Now with reference to any garage, was there a garage on there?

A. Yes. On the side towards West Point there was a very rickety structure that apparently was built for a garage, but it had a lot of old batteries and junk in it, and over that there were maybe two or three little bitty rooms.

1835 Q. I'll show you this lease and ask you if that was the original lease by which your husband bought this property from Mr. Carlisle, dated the 13th day of July, 1931.

A. That is correct.

Q. Now, at that time, and of your own knowledge prior thereto, would you tell the jury whether there were any tourist camps or cabins of any description on those premises.

A. There was not a cabin of any kind on the grounds.

Q. Now, after you had purchased those premises in

Testimony of Mrs. Edward S. Palmer

July of 1931, did Mr. Palmer, or did you, yourself, cause the name of that property to be changed?

A. Yes, we did.

Q. What did you change the name to?

A. To Beech Grove.

Q. Tourist Camp?

A. Yes, sir.

Q. Was that name changed and was that sign erected at any time prior to the time you all got it?

A. No, sir.

Q. Now, after you had gotten it and had changed that name, did you make arrangements to build cabins of any description?

1836 A. That's right, we did.

Q. When did you make those arrangements, Mrs. Palmer?

A. Well, I think in July of 1931.

Q. Now, did you purchase brick?

A. Yes, sir.

Q. From what concern?

A. The West Point Brick Company.

Q. Now, did you and your family live there, Mrs. Palmer?

A. Yes, my four children and Mr. Palmer and I.

Q. How long did you remain at those premises before you returned to Springfield, Tennessee?

A. Well, from the time that we came there in the latter part of July or the very first part of August, when we brought the children and camping equipment, we stayed there until just time to put them in school in Springfield, arriving back in Springfield-I would say the day before school opened.

Q. Which would be approximately what date in September?

A. Well, I would say the first week in September.

Q. Up to the time you left there early in September, were there any cabins or camps of any kind, character or description, ready for occupancy?

1837 A. No, sir.

Q. Now did you purchase any equipment to

Testimony of Mrs. Edward S. Palmer

equip those cabins?

A. The only thing that I bought and put in those cabins were some blankets that I bought myself in Springfield, Tennessee.

Q. I'll show you two sheets of paper and ask you to examine that and tell the jury whose handwriting appears thereon.

A. This is my handwriting.

Q. Do they reflect expenditures that you made to pay for certain equipment of the tourist cabins?

A. Labor and some building material.

Q. Now, will you examine that and tell the jury when, for the first time, you bought any equipment to furnish those cabins.

A. Now, will you repeat that question again?

Q. When you bought any equipment to furnish the cabins.

A. You don't mean to build.

Q. No, I don't mean to build.

A. Well, on September 14th, I gave the Springfield Woolen Mills a check for seven blankets.

Q. Now was that purchased personally by you in Springfield, Tennessee?

1838 A. Yes. Mr. Palmer and I went over to the mill.

Q. After September 14th, did you bring those blankets, being the first article that you purchased, back to the Beechwood tourist cabin?

A. I brought them to Louisville. I didn't bring them to the Beech Grove Camp.

Q. When was that?

A. Well, that was sometime, several days after the 14th of September. The exact date I can't tell you.

Q. Now, Mrs. Palmer, are you able to tell this jury when the first cabin was ready for occupancy that was erected on those premises?

A. In October 1931.

Q. Are you able to tell the jury whether or not, prior to October 1931, during the months of July, and August and September, any person other than your husband and your family ever occupied a single inch of any space within

Testimony of Mrs. Edward S. Palmer

any of the buildings on those premises?

A. Not in any of the buildings, no, sir.

Q. Did they occupy any space other than the buildings?

A. Well there was one old man, traveling in an old rickety Ford, came there with his daughter and wanted to know if he could pitch a tent on the grounds that night. We let him stay there that night, and then the next morning they left.

Q. Now with that single exception, during the entire time you were there up until October 1931 did any other person occupy a single inch of space on those grounds or in any of the buildings?

A. Absolutely not.

Q. When were you first interviewed in this case?

A. Last Monday night, about midnight.

Cross-examination by Mr. Hogan.

Q. Mrs. Palmer, when did you leave and go back to Springfield?

A. Just before school opened. I don't know the exact date.

Q. How long were you absent?

A. What do you mean by that?

Q. How long were you in Springfield?

A. You will have to ask that plainer. I don't know what you mean.

Q. You went to Springfield to put your children in school?

A. That is right.

1840 Q. How long did you stay?

A. How long was I gone to Springfield?

Q. Yes?

A. I stayed there the rest of the time. I never came back, only to visit Mr. Palmer's relatives.

Q. Then from the first part of September, after that you don't know what happened out there?

A. No; I just know that I came back and brought the blankets that time in September to Mr. Palmer's mother who was then living on Edenside Avenue. I had no actual

Testimony of Mrs. Edward S. Palmer

knowledge of the operation of the camp.

Q. Who would know about that?

A. Mr. Palmer Sr. then took the operation of the camp over.

Q. He is now dead?

A. Yes.

Q. Did he look after it during your absence?

A. Yes.

Q. How long did Mr. Palmer, your husband, stay in Springfield?

A. Well he stayed there continuously, only he did come back up and see that some electric lights were put in the cabins.

Q. So then you are not able to say, nor is your
1841 husband able to say what went on at that Beach Grove during your absence and during Mr. Palmer's absence?

A. The only time that I can speak positively as to what went on there is when we were on the grounds.

Q. And did Mr. Palmer Sr., your husband's father operate that place during your absence and that of your husband?

A. Mr. Palmer's father had someone there operating it for him, driving out practically every day to see about it.

Q. He had somebody in charge?

A. That's right.

Q. So you don't presume to know whether they rented part of those premises or not?

A. I told you I only knew what happened while I was there, and I did not leave there until September, and when I left there in September there were no cabins available to be used; they were under construction.

Q. But the employees of Mr. Palmer Sr. were in charge of the buildings on that ground?

A. That I cannot answer at all because I can't tell you what happened when I was not there.

The Court: I believe the witness is only trying to testify up until that first week in September.

1842 Witness: I can't go any further than that.

The Court: She admits that she does not know

Testimony of A. G. Shields

anything about what happened out there after the first week in September.

Mr. Hogan: That is what I wanted to know.

The Court: I think that's understood. If the witness was not there she certainly doesn't know anything about it.

Mr. Hogan: That is all, Mrs. Palmer.

Mr. Brown: I would like to introduce these pages as Government Exhibit No. 83, with leave to withdraw and substitute a copy. I would like to introduce this ledger as Government Exhibit No. 84, and this list of expenditures as Government Exhibit No. 85.

(The three above documents were handed to the Reporter, marked as indicated by Mr. Brown, and filed.)

A. G. SHIELDS was called in rebuttal by the Government and, after being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name?

A. A. G. Shields.

1843 Q. By what concern are you employed?

A. The West Point Brick Company.

Q. In what capacity?

A. Superintendent.

Q. As Superintendent of the West Point Brick Company, do you have custody of the books and records of that company?

A. Yes, sir.

Q. I hand you a ledger sheet and certain other documents, and ask you to examine those and tell the jury whether they are documents of the West Point Brick Company?

A. Yes, sir, these are our record sheets. That is, these are our ledger sheets.

Q. Are those sheets kept in the regular course of business?

Testimony of A. G. Shields

A. Yes, sir.

Q. And is it in the regular course of such business that those records are kept?

A. Yes, sir.

Q. And the dates that are entered thereon, were they entered contemporaneously with the transactions which are indicated?

A. Yes, sir, according to our delivery tickets. Our delivery tickets are posted and charged to the customer on the ledger sheet.

1844 Q. I will ask you to refer to your records and tell the jury when the first bricks were sold by your company to Mr. Edward S. Palmer for the erection of the Beach Grove Tourist Camp?

A. Well they started delivery on, according to our records, on August 26, 1931.

Q. That is the first time, according to your records, that any buildings, any cabins, were erected out of materials from your company to Mr. Palmer's place?

A. That is right.

Q. Now, after that, will you tell the jury what other deliveries were made by your company to the Beach Grove Tourist Camp owned by Mr. Palmer? Suppose you just read on down?

A. Well our ledger entry posting was on August 29th, that is for total of 3500 brick delivered between August 26 and August 29, and on September first 1,000, September 16th, 5,000; and then on September 18th we gave him credit for a check for \$38.25. On September 25th we delivered 4,000 more; and on October 5th we credited another check of \$6.50. That cleaned out that transaction for that year.

Q. Will you tell the jury the last material
1845 you delivered there for the erection of those cabins?

A. On April 28th 1932, 600 brick; April 30th 300 brick; on June 15th, credit check for \$7.60 checked out the account.

Q. Now that is the year following 1931 that you have just testified about?

A. Yes.

Q. Now do you have the signed duplicates of the de-

Testimony of A. G. Shields

livery tickets?

A. We do not have. The tickets that we have are the ones that were signed by the man who delivered them, the teamster and the truck driver.

Q. They are a part of your records?

A. Yes.

Q. All right. Will you refer to those records and tell the jury when the first delivery of brick was made to the Beach Grove Tourist Camp, owned by Mr. Palmer?

A. August 26th.

Q. What year?

A. 1931—500 brick.

Q. Now that was the first delivery—

A. Yes.

Q. By your company of any brick to the Beach Grove Tourist Camp?

1846 A. Yes.

Q. And I will ask you to examine your records and tell the jury whether or not all deliveries of brick were subsequent to that date, extending on up to 1932, as you have told about?

A. These were the first delivery tickets and there was not anything delivered to Mr. Palmer prior to that.

Q. And all other tickets are subsequent to that first ticket, are they not?

A. That is right.

Mr. Brown: I would like to introduce these ledger sheets as Government Exhibit No. 86 with leave to withdraw and substitute a copy; and the delivery tickets as Government Exhibit No. 87.

(The above described documents were handed to the Reporter, marked Government Exhibits Nos. 86 and 87, and filed with the record.)

Cross-examination by Mr. Hogan.

Q. Did you go personally to those premises on the delivery of those bricks?

A. Why those tickets are signed by the customer that he received them.

Testimony of A. G. Shields

1847 Q. Well, do you live at West Point?

A. I live at the brick plant.

Q. Where is that?

A. About three quarters of a mile out of West Point.

Q. Before these brick were delivered there, do you know whether or not there were any structures existing on those premises?

A. I don't recall any. I know there were not any brick ones.

Q. You don't know or you are not prepared to say what was there before the brick was used?

A. No.

The Court: Members of the jury do any of you feel strongly against a night session tonight, or do you all think that you could handle a night session tonight for about two hours? The purpose would be—I believe it would be possible if we hold a session tonight we might be able to get through with this case tomorrow night. Mr. Thornbery, how do you feel?

M. Thornbery: All right.

The Court: Mr. Mattingly, how do you feel?

Mr. Mattingly: All right.

1848 The Court: If we don't finish tomorrow night we might go on over to the week-end, that is the reason I was asking you. I don't want to cause any of you any trouble or any great inconvenience. Is there any one of you that would object to it? Or feel that it would be detrimental to your health or cause you to be sick tomorrow for any reason?

Suppose we take a show of hands. How many of you would prefer to come back tonight and finish up with the case?

(Every juror raised his or her hand.)

It looks like all of you. Now will you gentlemen stay on for about 20 minutes longer now, and then adjourn until 7:30 tonight.

1849 DR. E. E. LANDIS was called in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

Testimony of Dr. E. E. Landis

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Dr. Edward Everett Landis.

Q. Where do you live, Dr. Landis?

A. I live at No. 7 Hawthorne Hill, Louisville, Kentucky.

Q. Of what school or schools are you a graduate?

A. I graduated from North Central College, and from Northwestern University Medical School—

Q. (Interrupting) When did you graduate from the Northwestern University Medical School?

A. In 1934.

Q. Did you graduate from there as an M. D.?

A. Yes, sir.

Q. After you graduated from Northwestern Medical School where did you have your internship?

A. At the Kansas City General Hospital, at Kansas City Missouri.

Q. How long did you stay at the Kansas City 1850 General Hospital?

A. Twelve months.

Q. Did you take any post graduate work?

A. Yes, sir. I had a year of post graduate training under the National Committee of Mental Hygiene and at the Louisville Hygiene Clinic and at the Louisville University Medical School; and I had a year of post graduate training at the University of Pennsylvania, under the Rockefeller Foundation, in neurology.

Q. What training have you had in psychiatric work other than you have related?

A. I spent two years as Assistant Physician in State Hospital No. 1 at Fulton, Missouri. Following that, I was appointed on the faculty at the University of Louisville as an instructor in psychiatry, and at the present time I am still on that staff and I am Assistant Professor of Psychiatry.

Q. That is at the University of Louisville School of Medicine?

A. Yes, sir.

Testimony of Dr. E. E. Landis

Q. Are you instructor in any mental hygiene or psychiatric courses outside of the University of Louisville Medical School?

A. In the last year I was instructor in the
1851 University of Louisville School of Social Administration.

Q. Have you had any experience with the Louisville and Jefferson County Children's Home, commonly referred to as Ormsby Village?

A. Yes, sir, I am at present director of the Department of Psychiatry of that institution.

Mr. Brown: All right, Doctor, you may be excused and returned at 7:30 tonight.

DR. ISHAM KIMBALL was called in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Dr. Isham Kimball.

Q. Where do you live?

A. Lakeland, Kentucky.

Q. What position do you hold?

A. I am Superintendent of the Central State Hospital at Lakeland.

Q. How long have you been Superintendent at Lakeland?

A. Not quite 3 years.

1852 Q. Of what schools or colleges are you a graduate?

A. University of Alabama.

Q. Did you get any degrees there, Doctor?

A. Doctor of Medicine.

Q. Have you, since your graduation, specialized in any field?

A. Psychiatry.

Q. Are you a member of any psychiatric associations?

Testimony of Dr. Isham Kimball

A. I am a member of the American Psychiatric Association, and I am a fellow in the American Psychiatric Association.

Q. Is there an association called the Kentucky Psychiatric Association?

A. Yes, sir, and I am a member of that and on the Board of Directors of the Kentucky Association.

Q. When was that association organized, Doctor?

A. In 1936, I believe.

Q. Were you the first president of that association?

A. I was.

Q. Now did you serve in the last war, Doctor?

A. I did.

Q. Did you have service abroad?

1853 A. I was about two years in France.

Q. After you returned, and since that time, have you specialized in psychiatric medicine?

A. I have.

Q. Did you at any time serve on the staff of any government hospitals or state institutions?

A. I served on the staff of a government hospital at Gulfport, Mississippi; and at Northport, New York.

Q. Now at Northport, New York, was that mental patients?

A. Entirely. Exclusively for mental patients. So is the hospital at Gulfport.

Q. Now at Alexandria, Louisiana, have you ever served there?

A. I was Chief of the Neuropsychiatric Service at Alexandria, Louisiana.

Q. Now, with reference to any experience here in Kentucky, did you have any experience in supervising in a government hospital at Lexington, Kentucky?

A. Yes I was clinical director of the government hospital at Lexington.

Q. For what period of time?

A. About 4 years.

Q. Now after that where did you go?

1854 A. I went from there to Gulfport, Mississippi, and I returned there and I was clinical director

Testimony of Dr. Spafford Ackerly

there from about 1938 until the time I came here.

Q. And since 1940 or 1941 you have been continuously Superintendent of the Central State Hospital at Lakeland.

A. That is right.

Mr. Brown: All right, if you will be back here at 7:30 tonight, please.

DR. SPAFFORD ACKERLY, was called as a witness in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name?

A. Spafford Ackerly.

Q. Where do you live?

A. 1319 Willow Avenue.

Q. What is your profession?

A. I am a physician and psychiatrist.

Q. What position as a psychiatrist do you now hold here in the City of Louisville?

1855 A. Director of the mental hygiene clinic and Professor of Psychiatry in the University of Louisville School of Medicine.

Q. Of what college or colleges are you a graduate?

A. Wesleyan University and Yale Medical School.

Q. When did you graduate from the Yale Medical School?

A. 1925.

Q. Since that time have you continuously followed your profession?

A. Yes, sir.

Q. After your graduation what positions did you hold?

A. Internship in a New York Hospital. Worcester State Hospital. The National Hospital in London. The University of Vienna Hospital. The Yale Institute of Human Relations in New Haven, Connecticut. As Research Associate and Assistant Professor, and then the University of Louisville.

Testimony of Dr. Spafford Ackerly

Q. And you have been continuously in Louisville since 1932?

A. Yes.

Q. Of what learned societies are you a member? Just a representative sample is all that is necessary.

1856 A. The American Medical Association, the Southern Medical, the Kentucky Medical and the American Psychiatric Association, and the Association of Research on Nervous and Mental diseases, the Central Psychiatric Association, American College of Physicians, American Author Psychiatric Association, and Association for Research and Clinical Medicine, and the Kentucky Psychiatric Association.

Q. I think that is enough, Doctor.

Mr. Brown: Now, Your Honor, I can go into the examination of Mr. Robinson with Dr. Ackerly, unless you feel that we are running too close to the time. I also have Dr. Gardner to qualify.

The Court: I think you had better stop now with the qualifications of this witness.

DR. W. E. GARDNER, was called as a witness in rebuttal by the government and, after being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Dr. W. E. Gardner.

Q. Where do you live?

1857 A. Louisville, Kentucky, 1405 Rosewood.

Q. Where were you born?

A. Hardin County, Kentucky.

Q. Of what schools or colleges are you a graduate?

A. Well I am a graduate first of Georgetown College at Georgetown, Kentucky, and then the University of Louisville School of Medicine.

Q. After your graduation, what post graduate work did you do?

Testimony of Dr. W. E. Gardner

A. After serving several years as physician and superintendent of the Central State Hospital at Lakeland, I went to New York City and did post graduate work in nervous and mental diseases, and then came back to Louisville and located here in private practice in these specialties; and then I would occasionally, during the summer, take short post graduate summer courses, in New York, Boston, Ann Arbor, and Chicago.

Q. When did you begin to teach in the University of Louisville?

A. 1913.

Q. Since that time how long have you taught at the University of Louisville?

A. Well continuously since 1913.

Q. For the last few years, what type teaching
1858 have you done?

A. It has been altogether psychiatry. I have taught both mental and nervous diseases and since 1927 I have been clinical professor and head of the Department of Psychiatry and Mental Diseases at the University of Louisville School of Medicine.

Q. At any time did you conduct any neuropsychiatric sanitarium?

A. I did for several years. I was head of the Neuropsychiatric Sanitarium of Louisville, which I organized in 1919, and I was active head of that until 1925, and I still have connection with it.

Q. Are you on the staff of any Louisville Hospitals?

A. Louisville General Hospital, Norton Infirmary, St. Joseph's Infirmary and the Kentucky Baptist Hospital.

Q. Doctor, have you ever been president of the Louisville Society for Mental Hygiene?

A. I have.

Q. Have you ever been president of the Kentucky State Medical Association?

A. I was.

Q. Do you hold any fellowship in any learned society?

1859 A. I am a Fellow in the American Medical Association, the American College of Physicians and

Testimony of Dr. W. E. Gardner

the American Psychiatric Association.

Q. Did you ever hold any position on the Board of Examiners of the American Psychiatric Association?

A. I was for 5 years a member of the Board of Examiners of the American Psychiatric Association and Chairman of the Board for 3 years.

Q. Have you ever served as an American delegate to any foreign countries?

A. I served as a delegate to the Second International Congress on Mental Hygiene in Paris, France, in 1937.

Q. After that did you have any occasion to visit any psychiatric or neuropathic clinics on the continent?

A. I did. I visited the psychiatric clinic in that city, and later in Vienna, Switzerland, Belgium, England and Scotland.

Mr. Brown: All right, Doctor, please return at 7:30 tonight.

The Court: Now Members of the Jury, we will adjourn now until 7:30 tonight, and give you a short rest
1860 and, as I have said, continue to watch your diet and we will try to have a short session tonight.

Do not talk about this case among yourselves or with anybody or allow anyone to talk about it in your presence. We will adjourn until 7:30 p. m.

Convened pursuant to adjournment and continued with the further proceedings as follows:

DR. E. E. LANDIS, DR. ISHAM KIMBALL, DR. SPAFFORD ACKERLY and DR. W. E. GARDNER, were called back into the court room and took the witness chairs and were examined and testified as follows:

Mr. Brown: Over the recess I have exhibited to these four gentlemen the government exhibits which have already been introduced into evidence. All of those exhibits have been read to the jury, the ones that I am going to refer to, and I would like the privilege of not repeating those exhibits in my hypothetical question.

The Court: You may refer to those exhibits. The jury

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has had them and understand what they are and the doctors have read them. Is there any question about repeating the exhibits again?

Mr. Hogan: No, Your Honor.

1861 Direct Examination by Mr. Brown.

Q. Now, Doctor, I am going to ask you gentlemen to bear in mind that this hypothetical question I am going to propound to you, that you assume the following facts as having been testified to:

The defendant, Thomas Henry Robinson Jr., was born in Nashville, Tennessee, on May 5, 1907, the only son of Mr. and Mrs. Thomas Henry Robinson Sr.; that his father had a position, a responsible position, with the Nashville Bridge Company; that the family resided in a very good residential district in the City of Nashville; that as a youth and young man he attended Sunday School and church. He joined a Boy Scout Troop, and his grammar school career was practically in all respects normal. At 14 years of age he contracted tuberculosis and for approximately a year he was a patient in a tuberculosis sanitarium. He was released from this institution in 1923, at which time the tuberculosis had been arrested.

He lost a year's schooling while in the hospital. Upon his release, by private study and tutoring, he made up his studies. In the fall of 1923 he entered the Wallace Preparatory School, a private school for boys preparing for college in the City of Nashville. He obtained good

1862 grades and would have graduated except that he was minus one credit.

Early in his life, at approximately the age of 16 years he received as a gift from his mother a \$800.00 Buick Coupe automobile. During at least one of his summer vacations he worked for the Du Pont Company, probably in the capacity of chain man in a surveying outfit.

He entered Vanderbilt University as a special student in September 1926 and began to study law. He became a member of Pi Kappa Alpha social fraternity and also a member of Eta Gamma legal fraternity. He was a good student at the University, making average or better than-

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average grades. He made a grade of ninety in criminal law.

Approximately in June 1926, or a short time prior thereto, he met a young woman. He picked her up as she was waiting for a car and drove her home and, thereafter, had a number of engagements with her. She was below defendant Robinson's in the social strata. He and this young woman engaged in many acts of sexual intercourse. The young woman finally became pregnant.

On January 18, 1927 the young woman, her mother and aunt and two deputy sheriffs who were armed with a warrant called at the fraternity house on the campus of

Vanderbilt University, took Robinson Jr. out of the
1863 fraternity house, placed him in a car, took him to the county building where a marriage license was secured and defendant Robinson Jr. and the young woman were married on that date by a Justice of the Peace.

Robinson Jr. thereafter did not live with this young woman. She gave birth to a baby daughter on January 24, 1927.

Defendant Robinson Jr. continued his school career at Vanderbilt, and approximately March 1, 1927, Robinson Jr. through his father Robinson Sr. caused a petition to be filed in Davidson County, Tennessee.

Thereafter a trial was had in which charges were made that the young woman was unchaste and that the baby was a nine months baby and that the defendant Robinson had only known this young woman for a period of seven months. The trial was a vicious one where the character and reputation of the young woman was attacked. On July 6, 1927, the jury found in favor of the young woman, and found that Robinson Jr. was the father of the child and that, except for the acts of sexual intercourse that she had indulged in with Robinson Jr., she had been theretofore chaste. Motion for a new trial was filed on behalf of Robinson Jr. which was sustained by the trial judge.

Thereafter no steps were taken on behalf of Robinson
1864 Jr. for annulment and later the couple were divorced, in which action Robinson Jr. paid all the costs.

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Thereafter for a period of approximately a year and a half after this so-called forced marriage; he continued going to school at Vanderbilt, studying law. He quit the law school November 5, 1928. Prior to that time he had met and was going with one Frances Althausen, a girl approximately 17 years of age and he married Miss Althausen on January 9, 1929.

He obtained employment at the Wayne Lumber Company in January 1929. His work consisted of timekeeping and along clerical lines. He remained in that employ for about three or four months.

In March 1929, in Nashville, Tennessee, he appeared at the home of Mrs. Mary Lamb. He exhibited a badge and claimed to be a deputy sheriff. He had a revolver on his person which was stuck under the belt of his trousers. He told Mrs. Lamb that he desired to search the premises for the purpose of discovering illegal liquor. She protested this action and indicated a desire to call her husband on the telephone. Robinson Jr. would not permit her to do so and compelled Mrs. Lamb and her maid to sit in the front room. He searched the bedrooms of the house and obtained a large amount of valuable jewelry.

1865 After he had searched the bedrooms he demanded and received from Mrs. Lamb the keys to her automobile which was parked in the driveway and, thereafter, ordered Mrs. Lamb and her maid to the attic of the house. He went out and drove away in the automobile belonging to Mrs. Lamb.

On the same afternoon in the automobile of Mrs. Lamb he drove to the home of Mrs. Waggoner in the City of Nashville. He produced at this house fictitious warrants, gained entrance and compelled Mrs. Waggoner to permit him to search the premises. Mrs. Waggoner and her maid were the only ones present in the house. For the most part he confined his search to the bedrooms and took a large amount of valuable jewelry belonging to Mrs. Waggoner, and departed.

Thereafter, after a period of some weeks he remained in the City of Nashville and was recognized on the street by either Mrs. Waggoner or Mrs. Lamb which resulted in

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his being arrested on June 6, 1929.

Thereafter, on June 10, 1929, two indictments were returned by the Grand jury, one charging him with having impersonated an officer at the Lamb home and obtaining certain articles of jewelry; and the other indictment charging him with having committed robbery at the Waggoner home. The amount of jewelry obtained by him was in excess of \$7000.00.

Both offenses were felonies under the laws of 1866 the State of Tennessee and upon conviction Robinson Jr. could have been sentenced to a state penitentiary for a goodly number of years.

Robinson Sr. and an attorney representing Robinson Jr. made representations to the prosecuting attorney, and it was mutually agreed between them that Robinson Jr. would be committed to the Central State Hospital for a period of two weeks or ten days for observation. As a result, legal steps were taken and the matter was presented before the criminal judge on June 10, 1929, who ordered Robinson Jr. committed to the Central State Hospital for the Insane at Nashville, Tennessee, for observation.

Robinson Jr. remained at the Central State Hospital for the Insane until June 24, 1929, at which time he was returned to the custody of the criminal court. On June 27, 1929 a jury was impaneled in the criminal court to hear evidence on the question of insanity. The jury did hear the report and, as a result, returned a verdict that Robinson Jr. was insane and too dangerous to society to be set at large. The court then issued a decree to the effect that the defendant Robinson Jr. be committed to the Keeper of the Central State Hospital for the Insane for the Middle District of Tennessee in whose custody he shall remain as other patients as long as he is mentally 1867 insane, but should his mental condition become normal at any time in the future, the said superintendent will return the said defendant to the sheriff or jailer of Davidson County, Tennessee.

While confined in the Central State Hospital from June 10, 1929, until he was finally released under circumstances to be set out hereinafter, on May 20, 1930, a subjective

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history was taken, staff considerations were given to the case, and as a result Robinson Jr. was diagnosed as suffering from schizophrenia and/or dementia praecox.

On June 27, 1929, simultaneous with the commitment of Robinson Jr. as above indicated to the insane institution nolle prosequere was entered to the indictment which had theretofore been returned on June 10, 1929, charging him with having impersonated an officer at the Lamb residence. This left one indictment outstanding.

After the confinement of Robinson Jr. in the Central State Hospital, some of the jewelry was recovered and restitution was made.

Later, Robinson Sr. and Robinson Jr. and the attorney for Robinson Jr. met with the prosecuting attorney on one or more occasions before the adjudication of insanity was entered on June 27, 1929. It was understood and mutually agreed between them that Robinson Jr.

1868 should remain for some period of time. The prosecuting attorney had known Robinson Jr. from childhood and the youth had visited the prosecuting attorney's office when the latter was in the private practice of law and Robinson Jr. was going to Vanderbilt Law School.

On April 28, 1930, Robinson Sr. filed a petition in the County Court at Nashville, Tennessee, praying that Robinson Jr. be declared legally insane in the County Court and that he, the father, be appointed as guardian. Life, by that time, for Robinson Jr. was not pleasant at Central State Hospital in that he was complaining of the conditions; his father had appeared at the institution and protested the treatment afforded the youth.

On May 7, 1930, there was a hearing had in the County Court before a jury. As a result of certain testimony the jury found Robinson Jr. insane on this date, namely May 7, 1930.

On May 8, 1930, the remaining criminal charge outstanding against Robinson Jr. in the criminal court was nolle prossed by the prosecuting attorney.

On May 20, 1930, Robinson Jr. was released from the Central State Hospital and taken to the Western State Hospital at Bolivar, Tennessee, as a pay patient.

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As a result of the nolle prossing of the criminal
1869 indictments, the superintendent was instructed to
release him on May 20, 1930, wherein the superintendent of Central State Hospital advised the Commissioner of State Institutions that inasmuch as all criminal charges against Robinson had been nolle prossed, Robinson Jr. could no longer be held in the criminal insane institution.

On May 25, 1930, Robinson Jr. was received at the Western State Hospital at Bolivar, Tennessee. He was received there as a pay patient. He remained there for approximately a period of 3 months.

Robinson Jr. was released from the Western State Hospital on August 24, 1930, upon the insistence of Robinson Sr. and against the desires of then superintendent of the hospital.

As a result of observation had of Robinson Jr. at the Western State Hospital, it was determined by the psychiatrist in charge, and by reason of the staff recommendations, that he was a psychopathic personality without psychosis.

While he was confined in the Western State Hospital, Robinson Jr. was granted many privileges, which he consistently overstepped. He refused to do certain manual work such as scrubbing the dining room, but offered to supervise it.

1870 For a period of several months he was permitted to work for a construction company in a clerical job, which construction company was engaged in building buildings on the institutional grounds.

After Robinson Jr. was returned from the Western State Hospital by his father, he secured one or two jobs apparently of short or minor duration and did not hold them very long and apparently he was in and around Nashville, Tennessee until the latter part of May 1931, when he worked one day for the Serval Company at Evansville, Indiana. Then he came to Louisville, Kentucky. His father was acquainted with Mr. C. C. Stoll, President of the Stoll Oil Company. Early in June, about the 1st of June 1931, Robinson Jr. obtained a position with this company as a filling station attendant. He kept this job for about six weeks, voluntarily leaving this position to take

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a position with the Mutual Life Insurance Company at Louisville, which job he kept for about a month and a half.

He then went to Chicago where he secured a position with an oil burner company salesman.

In the fall of 1932 he worked for a business college in Nashville, soliciting students on a commission basis. After this there were several trips to Chicago in an effort
1871 to secure positions, but nothing very satisfactory ever developed.

On January 1, 1933, he and his wife, Frances Robinson, worked as custodians in an apartment hotel in South Bend for a period of about three months.

After this, Robinson Jr. went to Chicago and continued efforts there to obtain employment, without much success.

On August 27, 1933 he took an examination for a position with the Tennessee Valley Authority and attained very high grades, an average of 91.

On October 31, 1933 he obtained a position as time-keeper doing general clerical work with the E. I. Du Pont de Nemours & Company, Old Hickory, Tennessee. He remained on this job until April 23, 1934. At that time it came to the attention of his employer that he had been previously charged with criminal offenses. Since Robinson Jr. was under bond, it was necessary for his employer to discharge him. He offered to reemploy him to another position which was not bond employment but Robinson Jr. refused.

Early in the spring of 1934 Robinson was again charged with assault on a young woman living in Nashville, Tennessee. This young lady made complaint to the prosecuting attorney and an indictment was returned by the Grand

Jury on May 22, 1934, charging him with having
1872 made an assault upon the girl and after putting her in fear and danger of her life, of stealing her jewelry.

During that same period of time it came to the attention of the Deputy Attorney General of Nashville, Tennessee that there were at least two additional charges involving young women. At that time, in conference with Robinson Jr. and Robinson Sr., Robinson Jr. told the deputy Attorney General that he was not in the least fearful of be-

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ing charged with any crime by these young women; that if they did so charge him he would say that he had picked them up in his car and taken them out to the country and there voluntarily had sexual intercourse with him and thereby ruin their reputation.

Shortly thereafter, Robinson Jr. while at home one evening was approached by a deputy sheriff who had a warrant for his arrest. He jumped from the back window of his home and went to his wife's home and he immediately went to Chicago.

One indictment which was returned against Robinson Jr. was tried in his absence; a plea of not guilty was entered through his attorney and the Deputy Attorney General concurred in that plea of not guilty.

Robinson Jr. claimed that these charges in the **1873** spring of 1934 were frame-ups and sought to tear down everything that he had done to rehabilitate himself and that finally when the detectives came to his house one night to arrest him he had bolted as I have heretofore indicated to you.

He made his way to Chicago, Illinois, and there attempted to get a job. He did secure a position as janitor at the Forsythe Building in Oak Park, Illinois, on May 7, 1934, and held this position until August 18, 1934.

His wife came to Chicago, Illinois, from Nashville and joined him and he continued to do work at the Forsythe Building as I have heretofore indicated.

Witnesses produced by the government have said that during this period he was perfectly normal in all respects and knew the difference between right and wrong and realized fully the consequences of any criminal act.

After he had been working at this job at the Forsythe Building for a month under his correct name, he moved to a furnished apartment in Chicago with his wife. They assumed the aliases of Mr. and Mrs. John Ward, Jr.

On September 20, 1934 in Chicago he rented an automobile from a U-Drive-It Company under the alias of John Ward. In this car he and his wife drove to Indianapolis where he engaged an apartment which was subse-

1874 quently used as the hideout apartment to which he

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took Mrs. Alice Speed Stoll. This apartment was rented under the name of Thomas Kennedy. On October 7, 1934, Robinson, Jr. and his wife drive from Indianapolis to Louisville, Kentucky. He had substituted the Illinois plates of the U-Drive-It car with Indiana automobile license plates.

His wife, on October 8, 1934, left Louisville by train to go to her home in Nashville, Tennessee. Robinson Jr. registered at a Louisville hotel under an alias.

He visited the home of Mr. C. C. Stoll and Mr. George Stoll under the guise of being a telephone repairman.

On October 10, 1934, at approximately the hour of 2 p. m. he appeared at the Bardstown Road Station of Mr. Hugo Kottke and there from him obtained directions to the home of Mrs. Alice Stoll on Lime Kiln Road.

On October 10, 1934, Mrs. Alice Stoll was kidnapped by Thomas Robinson Jr.

Mrs. Stoll was taken from her home, bound and gagged after having suffered two severe blows by a pipe on her head. She was put in the back of a car, bound, covered by a blanket and newspapers and transported to Indianapolis, Indiana.

About October 7, 1934, prior to leaving the hideout apartment in Indianapolis he had prepared a two-page ransom note. At the time of the kidnapping of Mrs. Stoll he left in her home the ransom note which you have heretofore read, being Government Exhibit No. 33.

Arriving at the Indianapolis, Indiana, garage near the apartment, he left Mrs. Stoll for a few minutes telling her he would bump her off if she made a sound. He returned and said the time was not right to take her into the hideout apartment. He drove her around the suburbs of Indianapolis, during which time Robinson Jr. removed the tape from Mrs. Stoll's mouth and the wires from her wrists. He demanded that she sit in the front seat.

When questioned by Mrs. Stoll as to why he had kidnapped her he replied he did it for the money.

Mrs. Stoll remained a kidnap victim in this hide out until October 16, 1934. On many different occasions, he,

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Robinson Jr., had occasion to leave the apartment. Mrs. Stoll, bound, gagged, wired to a chair, was left in a closet which was closed.

She was compelled to write a letter to her husband and a letter to her friend, Miss McHenry, and to send her wedding rings in a letter to a person who was described to Mrs. Stoll as an intermediary who was in fact Thomas H. Robinson Sr.

Robinson Jr., in an effort to get in touch with **1876** the Stoll family, asked her who he should call and she suggested that Miss McHenry be called.

Thereafter Miss McHenry received several calls in which effort was sought to expedite payment of the ransom money.

Fifty Thousand Dollars in ransom money was raised by Mr. W. S. Speed, the father of Mrs. Stoll, and was shipped by express to Nashville, Tennessee, and there delivered to the possession of Thomas H. Robinson Sr. who, in turn, gave the money to Robinson Jr.'s wife. The latter, by train and by automobile, arrived at Indianapolis, Indiana, on the morning of October 16th, 1934 at about 9 o'clock or so. She called at the hideout apartment and gave the money to Robinson Jr.

Robinson Jr. then took the ransom money, the entire \$50,000, and tied Mrs. Stoll in the closet in the apartment and left Mrs. Stoll there with his wife, Mrs. Frances Robinson. He returned after about thirty minutes, at which time Mrs. Stoll was still tied to the chair in the closet.

During the time Mrs. Stoll was held in the apartment at night she would be tied in bed, each wrist being tied to the bedsprings, and attached by a cord from her wrists to Robinson Jr.'s wrist.

On the morning of October 16, 1934, after Robinson Jr. had left the second time, Mrs. Stoll and Mrs. **1877**

Robinson remained in the apartment for approximately two hours.

They then left, Mrs. Robinson Jr. having unbound Mrs. Stoll and they went to the home of the Reverend and Mrs. Clegg, a relative of Mr. Berry V. Stoll, Mrs. Stoll's husband.

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The name of the Reverend and Mrs. Clegg had appeared in the newspapers which defendant Robinson Jr. had brought to the hideout apartment in Indianapolis.

Dr. and Mrs. Clegg drove Mrs. Stoll and Mrs. Robinson toward Louisville on the afternoon of October 16, 1934. Mrs. Robinson Jr. had at that time a packet of the ransom money, containing approximately \$470.00. All of the remaining amount of the \$50,000 had been removed by Robinson Jr. at the time he left the apartment.

Mrs. Stoll was returned to her home on October 16, 1934, by Agents of the Federal Bureau of Investigation who had previously ordered all persons off of the Stoll premises with the exception of Mr. Berry V. Stoll and themselves.

Robinson Jr., after he left the apartment, went to Springfield, Ohio, went to a tourist home and registered under an alias and stored the car in a garage. He remained there only for a short time and then he made

1878 his way by a route unknown to New York City. At

New York City he registered at a large hotel under an alias. On New Year's eve night in 1934 in a New York night club he met a woman by the name of Jean Breese. Thereafter in New York City he lived with Jean Breese under aliases at different hotels and apartments.

After several months he and Jean Breese made a trip to California. There they stayed at various hotels and other places under aliases. In California he bought a Three-Thousand Dollar Packard, for which he paid cash.

The two of them made a trip back to New York and disposed of it there and at that time bought a Plymouth. He remained around New York for several months, under aliases, then motored back to California.

In both New York and Los Angeles, Robinson Jr. rented safety deposit boxes under aliases where various sums of the ransom money was hidden, \$7500 or \$10,000.

Before spending any ransom money, Robinson Jr. took great pains to exchange it for good money, so to speak. He would follow such a procedure of going to a telegraph office at Los Angeles, sending a wire to himself at San Francisco, wiring a large amount of money, and then call

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at San Francisco and pick up the money. On at least one occasion he gave his mother a large amount of money
1879 which he had secured as a result of exchanging ransom money. He washed this money off and then treated it in order to obliterate any of his fingerprints. He gave to other members of his family and Jean Breese's family large sums of money.

On May 11, 1936, Robinson Jr. was apprehended at Glendale, California, by Agents of the FBI. Jean Breese, the woman he had been traveling with, revealed his identity and location to the FBI. He was living at the time of his apprehension in a furnished house under an alias.

At the time of his apprehension he had on his person a loaded forty-five automatic pistol. In the house was found a loaded shotgun and at least three other loaded revolvers. He also had in his house several thousand dollars of the ransom money.

Following his apprehension he was brought by plane to Louisville, Kentucky, and on May 13, 1936, entered a plea of guilty and was sentenced to life imprisonment.

Later a writ of habeas corpus was brought by Robinson Jr., and it was decided by the California Court that his constitutional rights were not protected in that he had not been adequately represented by counsel of record. This sentence was set aside and he was remanded to the

United States District Court for the Western Dis-
1880 trict of Kentucky for plea.

Upon the arrival of Robinson Jr. to the United States Penitentiary at Atlanta, Georgia, he was given a physical examination and a mental examination. He was immediately after that transferred from the U. S. Penitentiary, at Atlanta, Georgia, to the United States Penitentiary at Leavenworth, Kansas.

On June 19, 1936, he was examined by a psychiatrist at Leavenworth, at which time he was found to be respectful, polite, and agreeable; he was not depressed; at the same time he was not facetious; that he understood perfectly well his situation; nothing was observed to indicate any mental illness; that he gave the impression of apparent constitutional lack of responsiveness to social demands,

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truthfulness, decency, and consideration of others; that he was found to be unable to profit by his experiences; that he lacked continuity of purpose of a domestic, occupational and social level.

The conclusion was reached by the prison psychiatrist at Leavenworth that Robinson Jr. was as of that time a constitutional psychopath, inferior, with criminal instincts, irresponsible, hyper-sexual activities, and emotionally unstable.

Robinson Jr. was transferred from Leavenworth, 1881 Kansas, to the United States Penitentiary at Alcatraz. On July 25, 1939, he was examined by a psychiatrist, who found him to be a psychopathic personality and an individual who knew right from wrong, and was able to appreciate the consequences of any criminal act.

At the United States Penitentiary at Leavenworth, Robinson Jr. wrote a letter to Sanford Bates, the then Director of the Bureau of Prisons, being Government Exhibit No. 78. The letter is dated July 1, 1936. The following portion is read: "For your information I would like to state this: That I am not a mental case; I have no psychosis; and that former decree of insanity was the result of my father imposing on his friendships."

That is the evidence which has been introduced by the government.

It is claimed by the defendant Robinson Jr. that as a result of this forced marriage he became irritable, that he had suffered a number of diseases, that he was moody, withdrawn, and that he was subject to sudden fits of temperament.

It is further claimed by Robinson that in the year 1931 he was employed by the Stoll Oil Company and that he had become acquainted with Mrs. Alice Speed Stoll; that they had gone on at least one occasion to the Beach 1882 Grove Tourist Camp on the Dixie Highway in Louisville, Kentucky, where they had indulged in acts of sexual intercourse.

It has been shown by the government witnesses that at the time of the transaction the tourist camp in question was not in existence and no cabins were even built.

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It was further claimed by the defendant Robinson Jr. that he was suffering with a delusion that he was a reincarnation of Patrick Henry, and that at any time he drank beer, he drank only Patrick Henry beer; that on October 7th, and for a short time prior thereto, he was suffering under the delusion that Mr. C. C. Stoll had prevented him from obtaining any employment, although there was shown to be in his possession and in the possession of the Tennessee Valley Authority a letter from Mr. Stoll recommending Robinson Jr. highly; that he determined, as a matter of revenge against Mr. Stoll, to kidnap him.

He came to Louisville and examined Mr. C. C. Stoll's home and he was away. He examined the home of Mr. George Stoll. He then went to the Kottke garage on the Bardstown Road and received directions to Mrs. Stoll's home; that he went to Mrs. Stoll's home and there posing as a telephone man gained entrance; that he went upstairs and was greeted by a smile, and that the recognition was mutual. After talking for approximately an hour it

1883 was agreed by Robinson and Mrs. Stoll that she would voluntarily go with him. That Mrs. Stoll was not struck on the head by Robinson Jr. at that time or at any time; that Mrs. Stoll was not threatened but walked to the automobile, got in, was not bound, and that she got on the front seat and they proceeded to drive to the Municipal Bridge.

It has further been claimed and testified to by a taxicab driver that on October 10, 1936, at some hour in the afternoon he had a minor brush with his car and recognized the defendant Thomas Robinson Jr.; that he did not report his recognition to any federal, state or police officer; that two years later by pictures in the paper he recognized Mrs. Stoll as being in that car; and that the only person he told was his wife.

It further developed that the witness in question did not marry until the year 1941, and that he had told no one of this occurrence with the exception of his wife until he went to the office of Mr. Hogan the defense counsel in this case.

It is further claimed by the defendant Robinson Jr. that as a result of an agreement with Mrs. Stoll she went

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to the apartment at Indianapolis, and there remained without any duress or force or threats of any kind for a period of four days; that during the last two days they
 1884 had a falling out and he was compelled to hold her there.

He makes no claim of any acts of intercourse were indulged in in the apartment at any time.

He further said that in pursuance to this agreement, a division was made of the ransom money with \$25,000 to Robinson Jr. and that at the time he left the apartment he left \$25,000 on the divan.

Now I call your attention to certain government exhibits, the ransom note being Government Exhibit No. 33; the letter to the custodian being Government Exhibit No. 48; the letter to W. A. Smith, Government Exhibit No. 51; the letter to Warden Bates, Government Exhibit No. 78; the letter to his father being Government Exhibit No. 80; the letter to his father being addressed to the intermediary and signed "The Kidnapper."

All right.

Mr. Brown: Now if Dr. Gardner will remain and the other three gentlemen will withdraw, I will proceed to ask Dr. Gardner.

The Court: You other three gentlemen retire from the court room and you will be called later.

1885 The Court: Now, as I stated to the jury when

Mr. Hogan presented his hypothetical case to the medical witnesses, I make the same statement to the jury at this time, that questions of facts assumed by the attorney for the Government are assumed for the purpose of the question. Some of those facts may be in dispute, but what are the real facts in this case is for the jury to decide when it reaches its verdict. For the purpose of this case, such facts are assumed by the witness to be correct.

DR. WM. E. GARDNER, resumed the witness-stand and was examined and testified as follows:

Direct Examination Continued by Mr. Brown.

Q. I will ask you, Dr. Gardner, whether in your opinion the man I described to you suffered such a perverted

Testimony of Dr. Wm. E. Gardner

and deranged condition of the mental faculties as to render him incapable of distinguishing between right and wrong.

A. It is my opinion that he did not and does not.

Q. Was the person incapable of distinguishing between right and wrong or unconscious at the time of the nature of the act he was committing?

A. It is my opinion that he was not.

Q. Was he able to distinguish between right
1886 and wrong and appreciate fully the legal consequences of his act?

A. It is my opinion that he was.

Q. Dr. Gardner, have you examined this defendant, Thomas H. Robinson, Jr.?

A. I have.

Q. When did you examine him, Doctor?

A. I examined him in company with three other physicians, Doctors Ackerly, Kimbell and Landis, at the Jefferson County Jail on October 11th, 1943.

Q. At that time, Doctor, were you appointed by the Court to examine this man and make a report to the Court?

A. I was.

Q. Would you tell the jury what your examination consisted of, and if you have a report read your report to the jury?

A. This examination was made by the four of us and the report is addressed to the Honorable Shackelford Miller, Jr., United States District Judge, Federal Building, Louisville, Kentucky, in regard to Thomas Henry Robinson, Jr.:

"Dear Sir:

We, the undersigned psychiatrists, on October 11th, 1943, have completed the examination of Thomas
1887 Henry Robinson, Jr. in accordance with your request. Our examination of this defendant consisted of, first, a physical examination, second, a neurological examination, third a mental examination. The physical examination was necessary in order that we might determine whether this man suffers from any physical illness which might in any way interfere with or in-

Testimony of Dr. Wm. E. Gardner

fluence his power of reasoning or his will power, or serve as a causative factor in the production of any form of mental disorder. We find the defendant to be in good physical condition and that he does not suffer from any acute or chronic illness which might interfere with the normal function of his mind.

A neurological examination was necessary in this, as in any other neuropsychiatric examination, to determine the presence or absence of any disease or condition of the peripheral nerves, cranial nerves, or any part of the central nervous system, including the brain, which might in any way interfere with the normal functioning of the mind or become a causative factor in the production of mental disease. We find no evidence of disease or impairment of the functions of the peripheral nerves, the cranial nerves, or of the central nervous system, including the brain.

1888 The mental examination: The defendant came quietly and willingly into the examining room and cooperated in the physical, neurological and mental examination. His speech was free, relevant and coherent. Orientation correct in all spheres, and he was in normal contact with his surroundings. No delusions, illusions or hallucinations were elicited. He showed normal insight, his judgment is not impaired, he shows appropriate emotional responses, and he does not show evidences of mental or emotional deterioration.

The diagnosis in this case is without psychosis. This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible.

Respectfully submitted,

Spafford Ackerly, M. D.
Edward E. Landis, M. D.
Isam Kimbell, M. D.
Wm. E. Gardner, M. D."

Testimony of Dr. Wm. E. Gardner

Q. Dr. Gardner, tell the jury whether in your opinion, as of October 10th, 1934, this defendant knew the difference between right and wrong.

A. It is my opinion that he did.

Q. Further, tell the jury whether in your opinion as of October 10th, 1934, this defendant fully appreciated the consequences of any criminal act.

A. It is my opinion that he did.

1889 Q. From your answer, from your consideration of the various exhibits and the facts which have been presented to you in the hypothetical question, have you or do you classify this defendant in any way?

A. I am unable to classify him as belonging to the category of any mental disorder.

Q. From your examination of the records and the statement and the assumption of the facts that I have given you, is there any statement you would like to give to the jury as to what category this defendant falls, if any?

A. Well, after considerable study of the records in this case which we have had before us for sometime, parts at times which have been supplemented by other reports, it is my opinion that the individual does not suffer from any recognizable mental disorder, but I do believe that he might be referred to as an anti-social person with criminal traits and character deficiencies.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Was he on the date of your examination - and what was that, Doctor?

A. That was October 11th, 1943.

Q. (Continuing) - a constitutional psychopath?

1890 A. I am unable to classify him as such. It is my opinion that he doesn't fall, certainly typically, within that classification.

Q. You are reasonably sure that he is not in that classification, or was not on the date of your examination.

A. Well, now when we mention the term of constitutional psychopath or psychopathic personality or constitutional psychopathic inferiority, all of which are supposed

Testimony of Dr. Wm. E. Gardner

to be more or less synonymous and are used—these designations are used rather extensively in prisons and state hospitals sometimes admit a relatively small percentage of cases under that designation, and yet it is a very broad, elastic sort of term. It is not well defined. People who suffer from various anti-social acts, who are unable to adapt themselves efficiently to their environment and meet the ordinary demands of society, sometimes get into difficulties, and they may be either committed to a state hospital or sometimes to a prison, and there is always an effort on the part of the staffs of these institutions to at least make some type of diagnosis, and if there is absence of frank mental disorder and confusion as into what category the patient or the individual might be placed, a patient in the state hospital or the individual in the prison, the tendency has been to classify these individuals as psychopathic personality. Now I'll say that there is a good

1891 deal in the history of this case which might have indicated that he had some of the characteristics of such an individual who is primarily an anti-social person with character deficiencies, who is unable to meet the ordinary demands of society and who comes frequently in conflict with the law. There are certain things in the case that indicated he might have some of the characteristics of a psychopathic, and my opinion is not rigid upon that point, although I am in doubt as to whether he falls typically within that classification.

Q. You think that might be a mistake when he was so classified?

A. Well, I would defer to the judgment somewhat of physicians who had him under observation in prisons, and inasmuch as they are in the habit of classifying a pretty large percentage of their inmates as psychopathic personalities I couldn't disregard entirely their opinions regarding the matter.

Q. So you are willing to accept the opinion of those in insane institutions that had him under observation.

A. No.

Q. You are not willing to do that.

A. No, not in his case, no, not in insane institutions.

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I said I would defer to the opinion of the physicians in prisons who had classified him as a psychopathic
 1892 personality. In one institution, perhaps, he was classified as that. I would not disagree with that diagnosis wholly. I would disagree with another diagnosis which was made in one institution.

Q. You are just picking your choice, in other words.

A. Well, I have a right to express an opinion, I understand.

Q. Will you let me have your statement, Doctor?

(Report handed counsel by the witness.)

Q. This is dated October 11th, 1943, is it not?

A. Yes, sir.

Q. I am going to take your statement, and when I mean your statement I mean the joint statement.

A. Do you have another copy of that, Mr. Brown?

Mr. Brown: We will have to get you another copy.

The Court: I have a copy.

(Copy handed the witness by the Court.)

The Witness: I would like to follow it with Mr. Hogan.

Mr. Hogan (To the reporter): Now, will you read me his answer to the—the Doctor's opinion back there as to what type of individual he considered this defendant to be.

The Court: He said—anti-social person with
 1893 criminal traits and character deficiencies.

Q. (Reading) "We find the defendant to be in good physical condition and that he does not suffer from any acute or chronic illness which might interfere with the normal function of his mind." Is there anything in that statement which would make him what you term him to be?

A. An anti-social person—nothing in that, no.

Q. (Continuing reading) A neurological examination is necessary in this as in any other neuropsychiatric examination, to determine the presence or absence of any disease or condition of the peripheral nerves, cranial nerves, or any part of the central nervous system, including the brain, which might in any way interfere with the normal functioning of the mind or become a causative factor in the production of mental disease." Anything in that state-

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ment that creates the type that you mention?

A. No, sir.

Q. (Continuing reading) "We find no evidence of disease or impairment of the functions of the peripheral nerves, the cranial nerves, or of the central nervous system, including the brain." Anything in that statement that constitutes him what you said he was?

A. No, sir.

Q. (Continuing reading) "Mental examination:
1894 The defendant came quietly and willingly into the examining room and cooperated in the physical, neurological and mental examination. His speech was free, relevant and coherent. Orientation correct in all spheres, and he was in normal contact with his surroundings. No delusions, illusions or hallucinations were elicited. He shows normal insight, his judgment is not impaired, he shows appropriate emotional responses, and he does not show evidence of mental or emotional deterioration." Anything in that statement that constitutes him what you said he was?

A. There is not.

Q. (Continuing reading) "The diagnosis in this case is without psychosis. This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible." Anything in that statement that constitutes him what you said he is?

A. There is not, and my statement was not based upon this examination when it was made. It was based upon the hypothetical question with all it contained.

Q. Now, you made an examination in the jail.

A. I did.

Q. And who else was present beside you, Doctor?

A. You were there, and by the way, we had met
1895 Mr. Robinson the day before. We went down on Sunday afternoon, hoping that we might see him then. He came in and was courteous, and we talked to him informally, and he said that—told us that he was sorry, but that you had requested that you would like to be present when the examination was made. We tried to get hold

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of you, telephoned your home and other places. I suppose it was hardly to be expected that we might find you on Sunday afternoon, and we sat around, and then we went back on Monday afternoon. At that time you were present with the other physicians, and I believe the marshal of this court was present.

Q. Now Doctor Gardner, your primary mission to examine—your own mission, so far as the court is concerned, was to determine Thomas Henry Robinson, Junior's then sanity or insanity.

A. That's right.

Q. And you fulfilled your mission by making this report to the court under date of October 11th, 1943.

A. That is correct.

Q. Having fulfilled your mission and having determined that he was then presently sane, you had no further interest so far as the court's appointment is concerned, did you?

A. That is correct.

Q. Now, on that occasion, you four doctors made
1896 a diligent effort to go behind October 11th, or the day that you examined him, to find out about his past, did you not?

A. We made some effort but it was objected to by you, to which we tried to adapt ourselves.

Q. So you had the man there just as he stood.

A. Yes.

Q. And you had to determine whether he was sane or not sane on that occasion.

A. Yes.

Q. Just as you saw the individual.

A. Yes, but we had had submitted to us some history of his case previously, and we wanted to confirm some of that by him if possible.

Q. And I wouldn't even let him tell what he had had for breakfast the day before, would I?

A. Almost the equivalent of that.

Q. Because you were not to determine what his sanity was the day before, it was that day.

A. Yes. We felt at the time we should have been per-

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mitted a little more latitude. We certainly would have been pleased if we had had a little more latitude in our examination, but we adapted ourselves to your request.

Q. The court asked you to do a specific job, and that was to find out what he was, with reference to
1897 whether he was sane or insane on that particular occasion.

A. That's right.

Q. Now, when were you employed by the Government or consulted, I should say, to testify in this case?

A. Well, we were subpoenaed within a relatively short time thereafter. I don't have a copy of the subpoena with me, but we were subpoenaed by the United States Government to be available as witnesses, and then sometime after that, of course, we came down and began going over material, photostatic copies of various examinations that had been made by the doctors and other people, in conference with Mr. Brown from time to time. I didn't make a memorandum of those dates, but we have had some two or three conferences with him.

Q. Dr. Gardner, do these psychopathic personalities ever recover, ever cured?

A. A true psychopathic personality does not recover. It is a life-long sort of situation. They usually show some tendencies relatively young and they drift about from pillar to post, have various difficulties, and go along and may get into, as I say, either a state hospital, very few get into state hospitals, the majority into prisons. They may remain a number of years and adapt themselves pretty well to the routine under supervision and control, but they do not recover. Then, that type of personality, that
1898 character deficiency, they lack feelings of duty and obligation, and honest, and decency, and consideration of others, which is a part of their personality make-up and they don't change materially.

Q. Then as you saw this individual on October 11th, 1943, he was certainly not in any wise a psychopathic personality, was he?

A. We didn't make any effort to make a diagnosis of psychopathic personality. Our reaction to this individual

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is being as an anti-social person—on the history.

Q. Not on the history, now, but just what you visualized. After diagnosing him as an expert on October 11th, did you come to the conclusion then that on that day he was a psychopathic personality?

A. No, I did not, and I'll say that I am not sure at any time that I have come to that conclusion. As I say a moment ago, I expressed a doubt as to whether or not he is a true psychopathic personality, but we didn't come to that conclusion then.

Q. What you saw then was a cured man or as sane a man as you might expect to find.

A. I didn't say a cured man. He seemed to be a normal individual.

Q. And if he had ever been a truly psychopathic personality, he would not have been normal on October 1899 11th, would he?

A. We could not have made that diagnosis from the type of examination to which we were restricted by you. We could not make a diagnosis of psychopathic personality. We made a diagnosis that he was not insane, he had no psychosis, but we couldn't make a diagnosis of his life-long history because we were not permitted to go into that.

Q. You didn't see anything that gave you the impression that he was—

A. You don't see things in a psychopathic personality.

Q. You didn't find anything.

A. You don't see anything on the surface. It is the behavior of the individual over a period of time that makes the diagnosis.

Q. What was his behavior on the 11th?

A. I mean over a period of time. His behavior was normal on that day.

Q. That would tend to disprove any misbehavior.

A. Not at all. Not at all. Not of a psychopathic personality or an anti-social individual, because he adapted himself very well, not only before us, but the record shows in prisons and other places where he had been.

Q. Well, on October 11th he appeared normal.

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A. Yes.

1900

Mr. Hogan: That's all.

Mr. Brown: That's all, Doctor.

DR. ISHAM KIMBELL resumed the witness-stand, and was examined and testified as follows:

Direct Examination Continued by Mr. Brown.

Q. In your opinion, Doctor, on October 10th, 1934, was the defendant Robinson suffering from such a perverted and deranged condition of his mental faculties as to render him incapable of distinguishing between right and wrong?

A. He was not.

Q. In your opinion, as of October 10th, 1934, did the defendant Robinson fully appreciate the legal consequences of any criminal act?

A. He did.

Q. Was his mind or the governing forces of his will, otherwise than voluntarily so destroyed that his actions were not subject to it and were beyond his control?

A. They were not.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Dr. Kimbell, what do you understand the
1901 psychopathic personality to be?

A. Well, the psychopathic personality is an anti-social person with criminal traits and character deficiencies.

Q. Isn't that an unscientific designation?

A. Well, the term psychopathic personality is also a very unscientific definition.

Q. That's what I am referring to, the term itself is unscientific.

A. Yes, sir.

Q. It is when you are at a loss to understand in just what type to place a man that you place him under that

Testimony of Dr. Isham Kimbell

term or definition.

A. No, I wouldn't say that. I wouldn't say that when I didn't know how to make—you refer to a diagnosis, do you?

Q. No, I mean after you have made your diagnosis and are at a loss to understand how to type him, you throw him in as a psychopathic personality.

A. No, I don't think so. Psychopathic personality has been referred to as very unsatisfactory terminology. I wouldn't say that every man that you didn't know how to type him should be placed in that category.

Q. What do you understand the subjective mind to be, medically?

1902 A. What do I what?

Q. The term subjective mind, is that the formulative mind, the mind that formulates the ideas?

A. Well, if there is subjective evidence to show that a man is suffering from a delusion or hallucination, the mind would be called into play to determine that.

Q. I don't believe you understand my question, Doctor. Aren't there two types of mind, the subjective mind and the objective mind?

A. Well, I haven't heard it placed that way. Some schools of thought speak of the conscious and the unconscious mind.

Q. Now with reference to the subjective, is that synonymous with conscious mind?

A. I should think so.

Q. Then the converse of that situation would be true, that the objective and the unconscious would be synonymous.

A. Well, the conscious and the unconscious mind goes rather deeply into a field known as psychoanalytical thought, and when you speak of the unconscious, that is a portion wherein complexes are supposed to be buried because they are not painful to the conscious mind, and when these complexes are brought about, the effort to bring them from the unconscious to the conscious, that brings
1903 about a conflict and produces these delusions and hallucinations, and other evidences of mental dis-

Testimony of Dr. Isham Kimbell

order. That is a theory. Some do not agree with that.

Q. In other words, it is what we sometimes call lack of coordination.

A. Yes.

Q. Out of gear, out of harmony with one another—is that right?

A. That's right.

Q. Now, when do you understand or believe medically and expertly this inception of a psychopathic personality to manifest itself?

A. Well, I believe that I would have to know the particular case that you have reference to.

Q. Well, is it hereditary?

A. I wouldn't say that it is hereditary.

Q. I didn't understand you.

A. I wouldn't say that it is hereditary. I would say it is a character deficiency.

Q. Well, it is a deficiency that's born with the individuals.

A. Oh, yes, it is a deficiency that is very applicable to a very large class of individuals.

Q. And that comes rather early in life?

A. Well, it might not. Psychopathic traits
1904 might come at any time.

Q. Well, these young boys that jump on the street car and pull the trolley off, steal small amounts, petty thievery, that's when the psychopathic personality commences to manifest itself, is it not?

A. Well, that might be. It would depend—you see a great many boys who as they grow up have overcome that thing. A lot of that is in the spirit of fun, merely the exuberance of youth, except petty thievery.

Q. Laying aside the natural normal boy's tendencies to give vent to his feelings, I mean the petty thievery, that's the commencement of the psychopathic personality—that or some other trivial or petty derangement, is it not?

A. It might be.

Q. And then the petty thievery—he takes one step further and he will get a little bolder, do something else on

Testimony of Dr. Isham Kimbell

a little larger scale a little more out of line with normalcy.

A. I didn't understand your question.

(Question read by the reporter.)

A. It is possible that might be true in some instances. It might be true not only of the psychopath, but it is frequently true of the feeble minded individual, the feeble minded boy or the feeble minded girl, and they are not psychopaths.

Q. They are born that way—feeble minded persons.

1905 A. Were you asking me?

Q. Yes, sir.

A. Well, that's right.

Q. Does the psychopathic personality recover, Doctor?

A. Well, psychopathic personality would not recover any more so than any other type of personality. Personality is peculiar to the particular individual and it will continue with him throughout life.

Q. Never an instance of the psychopathic personality being cured.

A. The entire structure of man's personality being changed, that would be necessary. I don't think it would.

Q. When did you examine Thomas Robinson, Jr., Doctor?

A. It was October 11th, I think.

Q. Did you find him in a normal condition?

A. I found him sane.

Q. Did you find him normal?

A. Well, I found nothing abnormal about him to indicate that he was suffering from a mental disorder.

Q. Did you then find him a psychopathic personality?

A. Well, I concluded from my observation and
1906 examination of him, study of such data that was available to me, that he was—

Q. No, now—

A. (Continuing) —that he is—

Q. Now wait a minute, Doctor, I asked you if on October 11th you found him to be a psychopathic personality.

A. Well, as I started to say, I found him on that particular date to be an anti-social person.

Testimony of Dr. Isham Kimbell

Q. You did?

A. Yes, with a character deficiency and criminal tendencies.

Q. I would like for you—is this a copy of your report?

A. That's right, sir.

Q. Will you read that and find that term described in there?

A. You mean the last paragraph? "This diagnosis in this case is without psychosis. The term is used by psychiatrists to signify that an individual is not insane, that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible." That's right.

Q. Now, you find in there, if you can, where you reported to this court that he was an anti-social person with criminal tendencies.

1907 A. I didn't report that. You asked me what I found personally. That's the report of the board.

Q. Are you a part of this report?

A. That's right.

Q. Do you have a dissenting opinion from that?

A. I do not.

Q. You made that report to the court, did you not?

A. That's right.

Q. You mean you held out on the court certain information?

A. No. He is without psychosis.

Mr. Hogan: That's all, Doctor.

Mr. Brown: That's all.

DR. EDWARD E. LANDIS resumed the witness-stand, and was examined and testified as follows:

Direct Examination by Mr. Brown (Continued).

Q. What is your profession?

A. I am Assistant Professor of Psychiatry at the University of Louisville, Medical School.

Q. Doctor, having in mind the hypothetical question

Testimony of Dr. Edward E. Landis

I asked you, tell the jury whether in your opinion, as of October 10th, 1934, this defendant was suffering
 1908 from such a perverted and deranged condition of the mental faculties as to render him incapable of distinguishing between right and wrong.

A. In my opinion, in view of those facts, he was not.

Q. I ask you further, whether in your opinion this defendant fully appreciated the legal consequences of any deliberate act.

A. Yes, sir.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Have you ever typed this individual, Doctor?

A. Beg your pardon?

Q. Have you ever determined in your own mind what type of individual he is?

A. No, sir, I arrived at no specific type.

Q. I believe you made an examination along with the other three doctors on October 11th, 1943?

A. Yes, sir.

Q. What kind of an individual did you find then, with reference to whether he was normal or abnormal?

A. I didn't use the terms normal or abnormal. I have that report with me if you would like it.

1909 Q. Was he normal?

A. I didn't say that he was normal. I said he was without psychosis; in other words, not insane.

Q. Did you write this report?

A. I concurred in the report.

Q. Who dictated it?

A. Four of us together dictated the report because the four of us examined him together.

Q. Did you report—is this your report, “He shows normal insight, his judgment is not impaired, he shows appropriate emotional responses, and he does not show evidences of mental or emotional deterioration.”

A. Yes, sir.

Q. Doesn't that almost make one a normal person?

A. It is hard to define a normal person.

Testimony of Dr. Edward E. Landis

Q. Are there normal persons?

A. I don't know what a normal person is.

Q. Are we all crazy?

A. No, sir, I hope not.

Q. Don't you think so sometimes after seeing a lot of crazy persons?

A. I don't believe that's pertinent here.

Q. Doctor, what is a delusion, as you understand it?

A. Delusion—you mean the definition of a delusion?

1910 Q. Yes, your own words to describe a delusion.

A. It is a false belief.

Q. An idea based upon false premises, is that a good definition?

A. Well, my definition is that it is a false belief.

Q. An idea in the mind that—or false belief of some fact that is non-existent.

A. I prefer to stay with the simple definition, false belief.

Q. All right. You don't want to go very far from base, do you?

A. No, sir, because one could get far afield.

Q. Have you ever had any dealings with individuals who believe that they were the reincarnated personage of another person?

A. Not with that alone.

Q. Well, with other conditions?

A. I have seen persons with very bizarre, unusual ideas of that sort in connection with a very full picture of various other things too in their make-up.

Q. These bizarre types associated with other things in their make-up, do they constitute a paranoid personality?

A. Not that in itself.

Q. No, I said associated with other ideas and
1911 things about their make-up.

A. Do you want me to elucidate on these other things?

Q. Yes.

A. Well, in the type of individual who is shy and in-

Testimony of Dr. Edward E. Landis

troverted, the so-called shut-in type of individual, the so-called wall flower type who doesn't like to mix with people, doesn't like to be with people, who is inclined to have weak sexual drives and inclined to show very little interest in the opposite sex, in combination with some of these make-ups and carrying out in living these false beliefs, sometimes it does mean something.

Q. What does it mean?

A. It sometimes is associated with more profound difficulties, but only in keeping with all the rest of the picture.

Q. Then, keeping it within the picture, as you say, what do you call that type of person? What medical expression do you apply to that?

A. I don't apply it to any general type, I only apply to an individual case where I have had a chance to study the entire facts of that case of that individual. I never apply it in general.

Q. What is a dementia praecox person?

A. Dementia praecox is a term that is applied
1912 to a mental illness which in my opinion has associated with a personality disorganization. It tends to occur in certain types of persons in certain make-up.

Q. What are some of the first symptoms of a dementia case?

A. Of a dementia praecox?

Q. Yes.

A. Well, it depends. It is hard for me—

Q. Let me ask you if morosity is a form—

A. Beg your pardon.

Q. Is morosity simply being morose?

A. Not necessarily. That in itself would not be a form of dementia praecox.

Q. Let's take this type of individual, one who has been very pleasing and has had a host of friends, and there is something in that person's life that shocks him or finally changes his insight into his social life, and then that person becomes the opposite of pleasantry, he gets to himself, hangs to himself, would you say that change in personality from one stroke to the other or opposite would

Testimony of Dr. Edward E. Landis

denote a form of dementia praecox?

A. That type of personality change doesn't happen, in my opinion.

Q. You never came in contact with that type.

A. No, sir. The person who makes friends, who
1913 is sociable and what not, does not develop dementia praecox.

Q. Is that your opinion, Doctor?

A. That's my opinion.

Q. What types do develop dementia praecox?

A. As I said, the person who is shy and timid, the shut-in type of person, the so-called introvert, with weak sexual drives, who doesn't like to be with other people, that type of person doesn't always develop, but if they develop a mental illness they are more apt to develop dementia praecox.

Q. When does dementia praecox usually strike an individual? When does it happen in his life?

A. It is a very insidious thing. It doesn't come on at any particular time. It isn't a sudden illness. It is in the process of occurring over a long period of time.

Q. Does it occur at the age or about the age of puberty?

A. Not dramatically so. At the age of puberty there are in most youngsters more emotional upheavals than earlier than that age, and therefore such symptoms are apt to be brought out at that particular age.

Q. They are more susceptible to changing their personality about that time?

A. I don't believe they change their personality.
1914 I think once a personality make-up is there it remains there, but they may develop an acute illness on top of that particular personality make-up.

Q. Following your theory then, if they have it say dormant in their system, and then something at the age of puberty or about that time strikes them and brings it to the front, then would you say there would be a change in personality?

A. No, sir. It is just an accentuation of the personality make-up, it becomes more pronounced during that illness.

Testimony of Dr. Edward E. Landis

Q. You can notice it more than you could ordinarily.

A. They tend to show symptoms, acute symptoms, at that time.

Q. What are those symptoms? Give us some of those.

A. You mean in what type of thing?

Q. Dementia praecox.

A. Acute dementia praecox, what type?

Q. Paranoid.

A. Paranoid type? The dementia praecox with acute paranoid reaction is highly upset, they tend to carry out and really act on the delusions from which they suffer,

they put into action the ideas that they are some-
1915 one, they live them out, these ideas, in their life pattern in such a way that it can be observed objectively by persons trained to recognize those symptoms.

Q. You don't have any trouble then, detecting that type of person.

A. Not at all, not in the acute illness.

Q. Do those types that you just mentioned go into rages sometimes?

A. That to me is not a characteristic symptom, no.

Q. You mentioned a term there, they get infuriated. Did you distinguish between rages and infuriation?

Mr. Brown: I didn't understand him to say that.

Mr. Hogan: Maybe I missed the term.

Q. What was your term there. I understood something about excitement.

A. They get upset, emotionally upset.

Q. And when they get emotionally upset, what do they do?

A. They are very anxious, they are panicky, afraid, and tend to be physically aggressive.

Q. What do you mean by that?

A. Well, if one, for instance, in the paranoid
1916 dementia praecox—one of the symptoms they are apt to show in an advanced stage is that—take, for example of someone saying something about them, ideas that people are talking about them, they not only have the idea, they go and act on that idea to check on it and see if they were talking about them, they stop the man whose

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talking about them and say "What did you say about me?" or they may attack him. It is carried out in action.

Q. In other words, the paranoid type is an active bird, he goes into action.

A. Yes, sir.

Q. He gets an idea, you can't stop him.

A. In the acute paranoid state.

Q. You can't stop him, he has got to go, is that right?

A. In the acute paranoid state; yes, sir.

Q. I mean, if he gets an idea, he has got to satisfy that idea.

A. I am talking about the people talking about him.

Q. Let's see about some other actions now. Suppose he gets some other idea, not ideas of reference, but ideas, say, of persecution.

A. What do you mean by persecution?

Q. Well, somebody is doing him wrong. What does he do in that case?

1917 A. Someone has done him wrong?

Q. Yes.

A. And still in the acute paranoid state?

Q. Yes.

A. I don't see that that is much different than the idea that they are doing him wrong by talking about him.

Q. In other words, he does something—

A. He is apt to do something about that particular thing.

Mr. Hogan: Thank you, Doctor.

Mr. Brown: That's all.

The Court: Do you want to go on with the other witness?

Mr. Brown: Yes, I prefer to.

The Court: I think possibly the jury had better take a short recess.

Members of the jury, do not discuss the matter among yourselves or talk to anyone about it.

We will take a short recess.

A short recess was taken, after which the following proceedings were had:

Mr. Brown: Your Honor, there was a part of a defini-

Testimony of Dr. W. E. Gardner

1918 tion I overlooked asking Dr. Gardner and Dr. Kimbell. If they could just step forward, I think Mr. Hogan has no objection, I will ask them the rest of the definition.

Mr. Hogan: That's all right.

The Court: Is Dr. Gardner here?

DR. W. E. GARDNER, was recalled and examined by Mr. Brown, as follows:

Q. Dr. Gardner, as of October 10th, 1934, having in mind the hypothetical question I asked you, in your opinion was that man's will, by which I mean the governing power of his mind, otherwise than voluntarily so completely destroyed that his actions were not subject to it and beyond his control?

A. It was not.

The Court: You want to ask him anything?

Mr. Hogan: No.

DR. ISHAM KIMBELL, was recalled and examined by Mr. Brown, as follows:

Q. Dr. Kimbell, in your opinion as of October 10th, 1934—

The Court: I think Dr. Kimbell testified to that. Dr. Landis did not.

Mr. Brown: I couldn't remember whether it was Dr. Kimbell or Dr. Landis. All right, Dr. Landis.

The Court: At least, I have a notation here as to that.

Mr. Brown: I had forgotten. I will rely on your notations.

DR. EDWARD E. LANDIS, was recalled and examined by Mr. Brown, as follows:

Q. Dr. Landis, in your opinion as of October 10th, 1934, was his will, by which I mean the governing power of his mind, otherwise than voluntarily so overthrown

Testimony of Dr. Edward E. Landis

and destroyed that his actions were not subject to it and beyond his control?

A. No, sir.

1920 DR. SPAFFORD ACKERLY, resumed the witness-stand, and was examined and testified as follows:

Direct Examination Continued by Mr. Brown.

Q. Doctor, in your opinion, as of October 10th, 1934, was the individual mentioned in the hypothetical question, capable of distinguishing between right and wrong.

A. Yes, sir.

Q. Did he realize the legal consequences of his own deliberate acts?

A. Yes, he did.

Q. Was his will, by which I mean the governing power of his mind, otherwise than voluntarily so completely destroyed and overthrown that his actions were not subject to it and beyond his control?

A. Not in my opinion.

Q. Now, Dr. Ackerly, having in mind the hypothetical question I asked you and the facts therein, was the person that was described of the type that develops dementia praecox?

A. No, sir. I would say that he was just the opposite type.

Q. Explain that in detail, Doctor, in your opinion what type develops dementia praecox, and in your opinion what type does not develop dementia praecox.

1921 A. The type that is likely to develop dementia praecox is the individual who is timid, shy, seclusive, withdrawn within himself, and yet he is conscientious and scrupulous, and law abiding. However, he finds it very difficult to influence other people or to arouse their sympathies and their feelings. He wants to, but he can't do it. He doesn't seem to be able to attract the opposite sex. He may wish that he had that ability to do it, but he doesn't seem to have the ability to attract the opposite sex.

Testimony of Dr. Spafford Ackerly

He may show a desire to be in the company of other people, of the opposite sex, but in reality that type of person has very weak sexual drives. Now that in general is the type of a person who, if he went insane, would develop dementia praecox.

Q. Doctor, assuming that a person at one time had dementia praecox of the paranoid type and was restored to sanity, would that person still show any signs of his previous mental disease?

A. No, not necessarily. The symptoms of the mental disease might clear up, but he would still be that sort of a person underneath that one could very readily, at least a psychiatrist could see that that was the type of person who could very well have had those symptoms of that type in his examination at any particular time.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. What are these paranoid types of dementia praecox, Doctor?

A. You ask me, what are they?

Q. Yes, what are the symptoms of those types? How do you detect them?

A. Well, in the first place, the type of person who would develop dementia praecox of the paranoid type or any type of dementia praecox, would be the type of person I have described. They have the symptoms either of persecution or delusions of grandeur, not just because the person said he had those ideas, but because one objectively can see him reacting to those ideas day in and day out.

Q. In other words, he not only has the ideas, but he carries them into action.

A. He can carry them into—I would say that he does not carry them into action. He reacts to the ideas in an insane way.

Q. Meaning what, Doctor?

A. That his reactions do not click with reality, do not click with the facts and are not logical.

1923 Q. What he does, the things he does, are illogical.

Testimony of Dr. Spafford Ackerly

in other words.

A. Illogical to the situation.

Q. Have no foundation in truth, in other words.

A. Any true fact.

Q. Believing in something that really does not exist.

A. They exist in the situation.

Q. They exist in that person's mind.

A. Yes.

Mr. Hogan: That's all, Doctor.

Redirect Examination by Mr. Brown.

Q. Now Doctor, from your listening to the hypothetical question, for the benefit of the jury, in your opinion did that describe any sort of a person, and if it did, what sort of a person in your opinion was it as developed in the hypothetical question.

A. The sort of a person that you developed in the hypothetical question, and I assume that those facts are true, as I said in the beginning, is an opposite sort of a person who develops dementia praecox, namely, one who is essentially an anti-social person without mental disease, without dementia praecox, with criminal tendencies
1924 and character deficiencies.

Q. Doctor, assuming from my hypothetical question, that the first signs developed at the age of nineteen to twenty-one, would you say that that would change your opinion?

A. Not in the least.

Q. Why not?

A. I would change my opinion—

Q. (Interrupting) If he was an anti-social person.

A. If he was this sort of person I have mentioned. Of course, one can assume that this sort of a character has been there and has not come out until that time.

Q. Why has he come out, based on the hypothetical question that I gave you?

A. It seems, if I remember it correctly, in the facts you brought out in the early history, that the young man probably got pretty much what he wanted until those years and had no need for anti-social behavior, if that is

Testimony of Dr. Spafford Ackerly

what you are asking.

Mr. Brown: All right, Doctor, thank you very much. That's all.

Recross-examination by Mr. Hogan.

Q. Did you agree with these other three doctors
1925 in your report to the court of October 11th, Dr. Ackerly?

A. Yes, I did.

Q. Did you find on that date the type of person that you have just described?

A. No, sir, either that person or the other person.

Q. You found a normal person, did you not?

A. No. The report, as I remember, said I found a person without psychosis, meaning without insanity.

Q. You didn't find a person with criminal tendencies on that date?

A. I wasn't looking for that.

Q. You didn't find any, either.

A. I couldn't find it. I wasn't looking for it.

Q. You didn't report it to the court.

A. I am a psychiatrist and I am looking for mental disease and not for criminal traits.

Q. Then would you say, in answer to Mr. Brown's question, that you were looking for criminal traits?

A. I had to when I read the history and heard the hypothetical question.

Q. You found nothing on October 11th that denoted any criminal trait?

A. Not in the slightest. Mr. Robinson was a gentleman throughout the whole examination.

Mr. Hogan: All right, Doctor. Thank you.

Mr. Brown: That's all.

1926 Mr. Brown: Your Honor, I exhibited to the jury these pictures this afternoon, and I was under the impression I had introduced them as a Government exhibit. The one keeping the Government exhibits tells me I didn't, and I would like to introduce them as Government Exhibit 88a, b and c.

Testimony of Dr. Thos. J. Crice

(The said pictures were handed to the reporter and marked as indicated, and are filed with the record.)

Mr. Brown: That's the Government's case.

Mr. Hogan: If Your Honor please, I want to reserve at this time saying whether or not I have any more testimony to offer in sur-rebuttal until tomorrow morning. I have a matter of grave importance to this case, and I will report it to the court in the morning.

The Court: It is strictly rebuttal?

Mr. Hogan: Oh, yes, it is strictly rebuttal.

Mr. Brown: That makes it ~~right~~ difficult for my witnesses. If he could indicate with any degree of accuracy, whether or not I could let certain of my witnesses go. I won't ask it, let it go.

The Court: All right, members of the jury, we will recess until 9:30 tomorrow morning. It is very possible we may be able to finish up the arguments and the instructions and let the case go to you before tomorrow is over. We hope so.

Do not discuss this matter among yourselves yet, even though the case has been concluded as counsel has said, or with anyone, or permit anyone to talk about it in any way to you. I always add now to my admonition the usual one about watching your diets and the water that you are drinking to see that none of us gets sick for the remaining short time that we will have to consider this case.

Mr. Marshal, adjourn court to 9:30 tomorrow morning.

Court was thereupon adjourned to Saturday morning, December 11, 1943, at 9:30 o'clock a. m.

1928 Court met pursuant to adjournment at 9:30 a. m., Saturday, December 11th, 1943, and the following proceedings were had:

DR. THOS. J. CRICE, was recalled and further examined by Mr. Hogan, and testified as follows:

Q. Dr. Crice, yesterday Mr. Brown, the prosecuting attorney for the Government, asked you whether or not

Testimony of Dr. Thos. J. Crice

you had a letter from Dr. Kennedy, I believe, authorizing you to use some of his material in an article which you proposed to write. Now did you locate that letter?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Will you please refer to it and read it to the jury?

A. (Reading):

"December 30, 1939

Dr. Thomas J. Crice
865 Starks Building
Louisville, Kentucky

Dear Dr. Crice:

Dr. Hugh Patrick of Chicago, when I sent him reprints of my papers, always thanked me for my 'advertisements.' After all, that is the only way we doctors can push ourselves about, and I am flattered and pleased that you should have thought my article helpful to you, for I suppose it is over cynical that we write just to spread ourselves! We really write

1929 because there is something in us that we want to say. Of course, publish your paper and then we should both, I hope, be very happy, happier anyway in the next year than we have been in the past.

With kindest regards and best wishes for the New Year, I am

Yours truly,

Foster Kennedy
410 E. 57th Street
New York City"

Q. Will you file that as defendant's exhibit No. 20?

A. I do.

(The said letter was handed the reporter, marked as indicated and filed with the record.)

Recross-examination by Mr. Brown.

Q. Now, is that the only letter that you have from Dr. Kennedy?

Testimony of Dr. Thos. J. Crice

A. Yes, sir.

Q. Now, as a matter of fact, you delivered this paper long before that letter was received, did you not?

A. I don't think so.

Q. Well, let's examine it.

A. This is December 30th.

Q. All right, read before the Kentucky State Medical Association at Bowling Green, September 11th to 14th, 1939.

Now what is the date of that letter?

1930 A. Now wait a minute. Now this is September 14th, 1939.

Q. And what is the date of that letter?

A. This is December 30th, 1939.

Mr. Brown: That's all.

Redirect Examination by Mr. Hogan.

Q. He never complained about your article, did he — Dr. Kennedy?

A. No, sir.

Mr. Hogan: That's all. File your letter, Doctor.

The Court: That all you wish with the doctor?

Mr. Brown: Yes, that's all.

Mr. Hogan: That's all.

The Court: All right, you are excused, Doctor.

The Court: Do you want your next witness called in the hall?

Mr. Hogan: Yes, I do. Mr. Carlisle.

The Court: What is his first name?

Mr. Hogan: Ivan Carlisle. Your Honor, I would like the privilege of just a moment. I haven't talked with this witness.

The Court: All right.

1931 IVAN CARLISLE, called as a witness in behalf of defendant, in sur-rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Ivan Carlisle.

Testimony of Ivan Carlisle

Q. How old are you, Mr. Carlisle?

A. I am forty-one.

Q. Are you married?

A. Yes, sir.

Q. Have any children?

A. One son.

Q. How old is that child?

A. A little past two years old.

Q. Where have you lived most of your forty-one years?

A. Hardin County, around West Point.

Q. Where do you live now?

A. Valley Station.

Q. What is your business?

A. I am in the tourist camp business now.

Q. What is the name of your tourist camp?

A. I carry it by the name of Beech Grove,
1932 brought my original name with me.

Q. You mean you are operating a tourist camp in Jefferson County by that name?

A. Yes, sir.

Q. Whereabouts in Jefferson County?

A. Ten miles South of the City Limits—Valley Station.

Q. At what particular location?

A. Better known as Orell.

Q. How long have you been operating it at Valley Station or Orell?

A. Well, I built the place new after the Government bought my property at West Point. I opened up sometime in 1940, the latter part of 1940.

Q. You have a new place on the left side of Dixie Highway that you built in 1940?

A. That's right.

Q. And did you formerly operate any other tourist camp?

A. Beechwood Inn at West Point.

Q. What side of the road was that on?

A. Well, I'll say—I will have to get my directions right—

Testimony of Ivan Carlisle

Q. Going towards Nashville.

A. It would be on the righthand side of the road.

1933 Q. Was there a grove of trees there?

A. Yes, sir.

The Court: What did you call it?

The Witness: Beechwood Inn.

Q. Was that ever known by the name of Beech Grove?

A. Yes, sir.

Q. That one down beyond West Point, now.

A. Yes, sir.

Q. Now, was that just before you traveled the road and went up Muldraugh Hill?

A. Yes, sir.

Q. How long did you operate that place, Mr. Carlisle?

A. I was up—I am a musician and I was playing in an orchestra in Wisconsin, and I came down there, built that place new and opened up for business October 11th, 1927, opened up for business.

Q. What kind of a business did you operate there?

A. Well, it was a restaurant and dance hall, and a tourist camp.

Q. Did you have any facilities there for accommodating tourists?

A. Not the best facilities, no, sir, I didn't.

Q. Did you have some facilities?

A. Yes, sir.

Q. What were those facilities?

1934 A. Well, I had a garage there, when I first built it I built it only for the garage, but I seen the tourist business was in demand so I built two rooms upstairs over the garage.

Q. Would you rent those out and were they so arranged that you could rent them out?

A. I had two nice rooms out there and I did rent those out to tourists.

Q. Did you keep a register and register tourists?

A. Yes, sir.

Q. Was that a part of your business, to do that?

A. Oh, yes.

Q. Now, do you know a man by the name of Elmer

Testimony of Ivan Carlisle

G. Allen?

A. Yes, sir.

Q. First, I will ask you, how long you operated this Beechwood or Beech Grove tourist camp?

A. Well, I operated that up till sometime in 1939, and I got engaged to a girl in Elizabethtown and she got killed twenty minutes after I was engaged to her and I was pretty well broke up, so I closed my place for approximately a couple or three months in 1939. Well, I broke out on the stage. I was xylophone soloist for the Continental Chautauqua Company.

Q. You said 1939?

1935 A. 1939. Then I later come back and opened the thing.

Mr. Brown: I don't want to object too much, but it ought to be in rebuttal.

The Court: Yes.

Q. Now let's confine our testimony to 1931.

A. All right, sir.

Q. In the summer of 1931, June, July and August, did you have any connection with inn or tourist camp during that period of time?

A. From the best of my recollection I rented that place to Mr. Allen the latter part of May or the first week in June, and he was there, I think, two months, and then my father and I decided to sell the place, then I sold it to Mr. Palmer.

Q. You didn't sell it to Mr. Allen then?

A. No, sir.

Mr. Brown: Mr. Allen didn't testify to that.

Mr. Hogan: Well, I am asking him.

The Court: No, it is not rebuttal of anything.

Q. Were those facilities there when you rented it to Mr. Allen?

A. Yes, sir.

Q. Were those facilities there when Mr. Allen rented it or when you sold it to Mr. Palmer?

1936 Mr. Brown: I am going to object to this. This is not rebuttal of anything. Both Mr. Allen and the Palmers testified to exactly the accommodations that were

Proceedings

there. They testified there was a garage, two rooms over the garage.

The Court: I don't remember about the two rooms over the garage.

Mr. Hogan: Here is what Mr. Allen said, if Your Honor, please:

"Q. During the time, during May, June and July that you were at the Beechwood Inn, were there any tourist camps or cabins of any description on those premises?"

His answer was: "No."

Mr. Brown: Look at page 1819 of the transcript, the one, two, three fourth question and read his answer if you want to know what he testified.

Mr. Hogan: What page?

Mr. Brown: 1819.

Mr. Hogan: That's the page I am reading from.

Mr. Brown: All right. "There was one big building all under one roof, a dance hall and small restaurant in front and a bar, and a small kitchen on one side and on the other side a very small check room. Then at the back, at the North end, in the rear, was a garage, two story, and there were three rooms upstairs, one about 12 x 14, and two very small rooms." Then he went ahead and
1937 told what members of his family slept therein.

The Court: Now if this witness is merely going to confirm that, certainly it is not rebuttal. If there is anything that he wants to differ with from the testimony—

Mr. Hogan: The question is that there were no accommodations at all for tourists on those premises.

The Court: Are those statements in the transcript, Mr. Hogan, that Mr. Brown read?

Mr. Hogan: Well, this statement is in there too, if Your Honor please: "During the time, during May, June and July, that you were at the Beechwood Inn, were there any tourist camp"—camp, now—"or cabins?"

The Court: Well, we have gotten down to a very small issue. He says those rooms are there. Let him say it.

Testimony of Ivan Carlisle

That's about all he can say, isn't it.

Q. Were those accommodations there, Mr. Carlisle?

A. Yes, sir.

Q. Were they there while Mr. Allen was there?

Mr. Brown: Mr. Allen testified to that, Your Honor.

Mr. Hogan: They said they were torn down, if Your Honor please.

Mr. Brown: I beg your pardon.

The Court: Who said that?

1938 Mr. Hogan: Mr. Palmer did.

Mr. Brown: I beg your pardon. She said she tore the garage down after they took over.

Mr. Hogan: And they took over in September—August.

The Court: Of course, we want to get on with the trial. Let's don't put on witnesses to testify to something that is not in dispute. If there is any contradiction that this witness wants to make, let him testify and get his testimony through with.

Q. How long did Mr. Allen keep those premises?

The Court: Is there any question about that?

Mr. Brown: Not a bit.

The Court: If he is going to say something different from what Mr. Allen said, I will let him testify, but if he is merely going to say the same thing that Mr. Allen and Mr. Palmer said, we don't want it put into the record again, do we?

Mr. Hogan: No, sir, we do not.

The Court: Will you assure me that he is going to say something different?

Mr. Hogan: Well, now, I don't know about Mr. Palmer. I just got this transcript a moment ago, if Your Honor please, if you will just indulge me a minute.

Mr. Brown: I submit if he is putting on a
1939 witness he doesn't know what he is going to say—

The Court: I don't think we put on rebuttal witnesses without knowing what they are going to testify about.

Mr. Brown: That's highly unusual.

Mr. Hogan: If Your Honor please, at this time, this is a very crucial stage of this trial.

Testimony of Ivan Carlisle

Mr. Brown: I don't know that we need any statement in front of the jury either.

The Court: Mr. Hogan, take your witness out and talk to him, if you have any question about what he is going to say, and confine his answers to rebuttal. Now if he is going to say the same thing the transcript says, let's don't waste time on it. He is a rebuttal witness.

Mr. Brown: I would like to ask this witness one thing.

The Court: All right.

Mr. Brown: Didn't you talk to Mr. Hogan about a month ago, all about this case?

The Witness: No, sir.

Mr. Brown: Didn't you talk to him about a month ago?

The Witness: He came out to my place and asked for the records in regards to the camp, and I told him I had no records.

1940 Mr. Brown: So you have conferred before this morning with Mr. Hogan about this case.

The Witness: That's all that I ever said to him.

Mr. Brown: And you conferred with him again last night?

Mr. Hogan: Yes, sir, I will state that.

Mr. Brown: I submit the defendant's counsel should know what this witness is going to say, when he puts the question to him.

Q. All right, now wait. Mr. Carlisle, would you divulge to me any information about this case?

A. Beg your pardon?

Q. Would you tell me last night what you were going to say or what you knew about this case?

A. Would I tell you?

Q. Yes.

A. No, sir.

Q. Why wouldn't you?

A. I didn't want to get mixed up in it.

Q. Didn't you tell me you would have to consult your own attorney before you would testify?

A. Yes, sir.

The Court: Now, Mr. Hogan, ask him the question. You have talked to him twice and he said he wouldn't tell

Testimony of Ivan Carlisle

you anything. Let's have him testify.

1941 Mr. Hogan: In the interest of fairness, I am taking a chance on what he is going to say.

The Court: In the interest of time, let's have him say it.

Mr. Hogan: They have made some pretty serious charges here.

The Court: Regardless of that, get along with the witness.

Q. Have you lived in Jefferson County and Hardin County most of your life?

A. Most of my life; yes, sir.

Q. After you leased this place to Mr. Allen, did you go by there frequently?

A. I was by there. I was a salesman selling automobiles in Louisville.

Q. Were those accommodations left there on the premises after you had turned it over to Allen?

A. Yes, sir.

Q. That tourist camp accommodation over that garage?

A. Yes, sir.

Q. Did he keep a record there, a registry?

A. I couldn't say that. I don't know.

Q. Did you see tourists in there from time to time as you went by there?

1942 A. I can't say that I did; no, sir.

Q. Was the garage still there and the accommodations?

A. Yes, sir.

Q. You went to collect your rent, didn't you?

A. What I could get.

Q. Did he pay you?

A. He did not; paid his first month and run him down for the rest.

Q. What did you do with Allen? Did you cancel his lease?

A. Yes, sir.

The Court: Any question about that?

Mr. Brown: No, sir. He sold this property on the 13th day of July, 1931.

Testimony of Ivan Carlisle

The Court: Now Mr. Hogan, I have asked you to put in rebuttal. There wasn't any question about cancelling the lease or anything else. Let's restrict the witness to rebuttal. You know what rebuttal is.

Q. There weren't any tourist cabins on there, were there?

A. No, sir.

Q. But that was a tourist camp, was it not?

A. Yes, sir.

The Court: Just a minute. This witness has testified that there was a garage and two rooms over it. He hasn't said it was a tourist camp. That's all you said was there in the way of accommodations, isn't it? Let's don't lead the witness into saying something that is not consistent with the facts.

Q. Mr. Carlisle, was that a tourist camp you operated there?

The Court: That's a conclusion. Tell what was there. If there is anything different from what you told, all right.

The Witness: Nothing at all.

The Court: All right, don't tell it over again.

Q. Was there a building besides the garage there?

A. The main building; yes, sir.

Q. What was that used for?

A. Dance hall. When I had it we used it as a dance hall, and a bedroom, kitchen, and my bar room.

Q. Where were you yesterday, Mr. Carlisle?

A. Where?

Q. Yes.

A. The FBI had me.

Q. Where?

A. Over in his office.

Q. Did you make a statement to the FBI?

A. I did.

1944 Q. Tell them what you have told here?

A. Yes, sir.

Q. In substance?

A. Yes, sir.

Q. Where were you Thursday?

A. The FBI had me.

Testimony of Ivan Carlisle

Q. Where?

A. The FBI had me.

Q. Where?

A. Over in his office.

Q. Did they know Thursday and Friday what you had testified here?

A. Took my deposition, I judge they did.

Mr. Brown: I will stipulate we did, and I have his statement right here.

Q. Could you get away from the F.B.I.? Would they let you go?

A. I hardly think so because they went with me everywhere I went.

Q. Oh, they did, did they? Were you in their captivity?

The Court: Is this in rebuttal?

Mr. Hogan: It is bearing on this case.

The Court: Is this in rebuttal?

Mr. Hogan: Well, I couldn't find him.

1945 The Court: All right. Let's restrict him to rebuttal. You know this witness is a rebuttal witness.

Mr. Hogan: That's all, your Honor.

Cross-examination by Mr. Brown.

Q. You told everything to the FBI the exact truth, the way it happened.

A. That's all I can tell anybody, is the truth.

Q. And during the period of June, July, August and September, you had nothing to do with this Beech Grove Inn or Beechwood Inn premises.

A. The best of my recollection, I left there the first week in June or the second week in June.

Mr. Brown: That's all.

Mr. Hogan: That's all, if Your Honor please.

The Court: That's the case for both sides?

Mr. Brown: Yes, Your Honor.

The Court: I understand then that the Government in the arguments will open and close?

Mr. Brown: Yes, Your Honor.

The Court: And in accordance with the conference

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which we had this morning, each side will take approximately two hours or maybe a little more if they are not completed at that time. I will notify counsel when two hours is complete, and if they have not completed at that time they will close shortly after. Is that agreeable to both sides?

Mr. Hogan: Yes, sir.

Mr. Brown: It will be two hours or less as far as the Government is concerned.

The Court: The Government will divide its time then between the opening and closing arguments, and in the opening arguments will make a fair presentation of the points on which they rely?

Mr. Brown: Your Honor, what time do you have by your watch?

The Court: I have twenty-six after 10:00.

Now there will be no coming in or going out of the court room while the argument of any attorney is taking place. They can leave and enter between arguments. While arguments are going on there will be no entering or leaving. Anyone is not willing to stay until the argument is over, they better leave now.

Is everyone in, Mr. Marshal, that wants to come in?

The Marshal: They are all in.

The Court: All right, the opening argument will be made by Mr. Inman for the Government.

1947 Mr. Inman closed for the Government, as follows:

Mr. Inman: May it please the Court.

The Court: Mr. Inman.

Mr. Inman: Members of the jury, for the past two weeks you have listened to the sorry story of a misspent life. You have listened to the tale, to the life history of a brilliant mind turned to crime. Nearly two weeks ago here in this court room, I outlined to you the evidence that would be introduced by the Government to sustain the charges laid in this indictment. You have heard more than a hundred witnesses, you have seen the reaction of those witnesses, you have observed them and listened to them. The whole picture, pieced together by that more than a

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hundred witnesses, tells to you, shows to you, the life and crimes of Thomas Henry Robinson, Junior. We have shown you that he was born in Nashville, that as a youth he had every advantage, that he was the only son of indulgent parents, that his whim was their law, that at the age of sixteen when most boys are getting bicycles and roller skates, this defendant is presented by his mother with a Buick coupe automobile. At a time when most boys are in ordinary public high schools, this boy is sent by his parents to a private preparatory school. You remember the Wallace Preparatory School. At a time when

1948 most boys are earning their own living, he is sent by his parents to one of the Nation's outstanding universities, Vanderbilt, studying there the law, excellent grades he made, you heard them, a fine student, a student of an old and noble profession, a student of the law that the evidence shows he was so systematically to break. He trained himself. He had good instruction.

And the evidence shows, then begins a series of events that have been pointed out to you. His marriage to a young lady in Nashville, the marriage that he calls a forced marriage, he refers to it only as that, a marriage that resulted from his own acts with this young lady. Shortly after that marriage a baby was born, and it is significant there the same parents who gave him the Buick, who provided him all the luxuries, came immediately to his rescue and his father filed a petition for annulment. There for the first time this defendant brings into a court of law his pattern of defense. What did he say? The girl was no good. The girl's character was attacked. And you heard the final court order. Finally a divorce, and then another marriage, a marriage to Frances Althausen. And then the evidence shows he moved from his father's home into an apartment, and to secure the money he needed the evidence shows you what he did. He entered the front door of Mrs.

Lamb's home and Mrs. Waggoner's home, and established the pattern, another pattern of his vice, entered the front door in an assumed character, a deputy sheriff, stole their jewelry, forced the ladies and the maids to do his bidding, stole their jewelry and their

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automobile and departed, and the evidence shows you that some two months later he was identified, apprehended. The same father came immediately to his rescue, and there he established his third pattern.

When he was faced there with the penitentiary, as the evidence shows you, he and his father and his lawyer went to the Deputy District Attorney and said "insane"—"insane." And they sent him to a hospital for ten days for observation. Robinson himself explains that. He explains that. He tells Mr. Bate in his letter which was read to you, "I was never a mental case. I have no psychosis and that former decree of insanity was the result of my father imposing on his friendships." As fine a statement of what happened there in Nashville as any man could make. His father imposed upon his friendships when this defendant Robinson, Jr. faced prosecution for robbery. Then he was sent to the Central State Hospital, then transferred to Bolivar, and Dr. Cocks, you heard him testify, said, "We had to release him. He was not insane. We could not hold him. He had too much mother and father." You heard the doctor say that. "Why did you release him, Doctor?"

"We could do nothing else. He was not insane. His
1950 was not a defect of mind, but of character," said the doctor, and he was released from Bolivar, Tennessee.

And the evidence shows you his employment, his work as timekeeper, his work at keeping records. True, he didn't hold the jobs long. The evidence shows you that in 1931 he came to Louisville, his father with him, introducing him to Mr. C. C. Stoll, his father still imposing on his friendships. And he secured from Mr. Stoll employment for this defendant Robinson, and for a period of approximately five weeks he worked here at the Second and Broadway station, a filling station attendant, pumping gas and parking cars, and there in all probability he did see Mrs. Alice Stoll, in all probability he did park her car or see her park it. He worked there. He knew who she was. And then of his own volition he left to secure better employment, to go with an insurance company, and then shortly after that, in late August or the first of September, accord-

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ing to his testimony, he left Louisville, and he was gone to Nashville and to Chicago.

There we find him in Chicago in the spring of 1934, working at the Forsythe Building. Dr. Long tells you of his actions there, the dentist who waited on him some nine or ten times. He tells you he was a perfectly normal individual. He tells you, "I asked him why he worked there.

He impressed me as an unusually bright man. We
1951 had discussions. In my opinion he was perfectly normal and certainly knew right from wrong." We

find him there in Chicago, working there under his own name, and there we find him assuming the name of John Ward when he rented that apartment at 4639 Magnolia Avenue. John Ward. You have heard that testimony, how that apartment was rented, how he and his wife, Frances, lived there as Mr. and Mrs. John Ward, how he went to the Saunders-U-Drive-It Company, and you recall that witness who tells you that this defendant Robinson as John Ward talked him into violating his own rule that he had established for his company. "He was certainly a bright young man," he said, "normal, intelligent, spoke well, and he convinced me that I should violate my own rule that I had established and let him have the automobile." And there he took that car as John Ward, adopting the name of a former employer. You heard Mr. John Ward testify, the employer. He discharged him because of his criminal record, offered him other employment where he would not be bonded. You heard that testimony. And after he secured this automobile in Chicago from the Saunders System, he went to Indianapolis with his wife, and there as Mr. and Mrs. Thomas W. Kennedy he rented the hide-out apartment you have heard about, 2735 North Meridian, and

1952 from September 22nd to October 8th there he was living in that apartment—planning, typing, scheming the crime that he was to commit in Louisville, planning to kidnap Mr. C. C. Stoll, planning to make easy money easy, and typed out the ransom note that has been read to you a number of times, typing it on this typewriter that he purchased here in Louisville at the Meffert Equipment Company, typing out to the Stoll family a message of fear,

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a message that would cause the Stoll family to pay money for the release of Mr. Stoll; threats as to what he would do with him, how he would dispose of the body. His training in the criminal law taught him concerning corpus delicti. He uses it in this note. Find the body to prove a murder. He knew that, and he impressed the family, or intended to with this letter, that he did know that. And did he know the law? Did he know the penalty? "Ah, yes," he said. He knew that he was subject to the death penalty under the laws of the State of Kentucky or under the federal law or Lindbergh Act. He said, "We know, we know we are subject to the death penalty." He knew it in that apartment when he wrote that letter in Indianapolis and he knows it today, and he has known it since his days in the law school at Vanderbilt. Yes he knew and here he wrote his supreme effort to instill fear in the Stoll family.

Having completed his effort to instill fear in 1953 the Stoll family, he proceeded to give directions.

Thoroughly and systematically he worked it out there at Indianapolis, full directions of what to do. And the evidence shows you that, having planned his crime, having prepared in advance his ransom note, having planned in advance this note to inject sufficient fear into the Stoll family to cause them to pay him \$30,000 for the release of Mr. Stoll, he proceeded to Louisville in the automobile he had taken from Saunders U-Drive-It. And we find him that night, the night of October 8th, registering in the Tyler Hotel here in Louisville, again under an assumed name, John Ward.

What did he intend to do when he came here? The note he wrote tells you what he intended to do—to kidnap Mr. C. C. Stoll. And what did he do? He went first to the home of Mr. C. C. Stoll and how did he get in? Very little different from the way he got into the homes of Mrs. Lamb and Mrs. Waggoner. Instead of being a deputy sheriff when he arrived at Mr. Stoll's residence, he assumed another pretended character. He assumed the character of a telephone repairman.

He went into the front door just as he did at Mrs. Lamb's and Mrs. Waggoner's. He tried to find Mr. C. C.

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Stoll and found him not at home, unable to locate him.

Then did he give up? No. He went to the next door, **1954** to the home of Mr. George Stoll. And how did he get in? The same pattern that had been his since the day he knocked on Mrs. Lamb's front door. He went in in a pretended character, still the character of a telephone repairman. He knew that that would gain him immediate entrance, and he got in.

He looked through that house; went upstairs and didn't find his victim and he left. And then we find him next at the garage of Mr. Kottke on Bardstown Road, inquiring the directions to the Berry Stoll residence, inquiring the directions to Line Kiln Lane, and Mr. Kottke furnished that direction. He told him how to get there and, as Mr. Kottke said on cross-examination, "I must have done a good job because he got there, didn't he?"

And the evidence shows you next that he is at the home of Berry Stoll. How did he get in? How did he get in any house he ever got in? In the same manner—go to the front door and, in a pretended character, gain admission. Still the telephone repairman but oh, what small difference from the pattern he cut in Nashville when he first started into Mrs. Lamb's home! The underlying principle is all the same. It's all of the earmarks of Thomas Robinson—knock on the front door and in a pretended character enter the house.

1955 And on October 10, 1934, that is what he did: A telephone repairman again. There he made sure what was going on. "Who is here?" he inquired of the maid. "Is the chauffeur, the yard man—who is here?" When he satisfied himself that there was only one person and the maid other than Mrs. Stoll on those premises, and that that old man would leave by four o'clock, he busied himself. He went to the garage to investigate, he went to the basement to investigate; he went to the telephone box and cut all the wires and removed them from the box, and in his pretended character he then gained entrance to the second floor of that Stoll residence to work on the extension. And Mrs. Stoll, who had been ill, moved from her bed room to the guest room to allow Robinson whom she

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thought was a telephone man, to work on the extension—and he went there.

He asked the maid for her help—all planned. He now had a situation where there were only three people on the Stoll farm, Mrs. Stoll, her maid and himself.

The wires were cut, and then he engineered that situation so that all of them came together on the second floor of that house. Then comes that gun in the back of the maid and he marched her into that room. You heard those details. Mrs. Stoll tells you what happened—how she tried

to dissuade him, offered him money, and when he
 1956 laid that gun of his on the bed how she made a dive for it and how he pulled out that iron pipe and hit her over the head, how he stunned her, how she ordered the maid to get the other gun and when she started after it herself he hit her over the ear with that pipe that this defendant sat here and told you he had never seen before, and Commander Dewey tells you he did see it.

He hit her over the head and the blood flowed in that room, on to the bedspread, one spot the size of a large dinner plate and another the size of a saucer. Who told you that? Mrs. Stoll told you that. Ann Woolet told you that. William Marshall Bullitt told you that. Captain Messmer told you that. Coastguardsman Creagor told you that. Who tells you it didn't happen? The defendant tells you that.

That is the picture of that guest room—the blood of Mrs. Stoll there on that bed as the result of a blow from that pipe wielded by that defendant.

Then he forced the maid to tie her hands, and then he tied the maid and took Mrs. Stoll away from that home.

Did she go willingly? With her head split open, the blood running down her back, with her hands tied, a gun in her back in the hands of this defendant? If that is willingly, then I do not understand the term.

1957 And at the point of that gun he took her in that condition to this automobile he had gotten from Saunders, put her in the back of that car on the floor, tied her ankles and covered her with a blanket and newspapers. Willing to go with him? Wanted to go with him? People

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that want to go, people that are willing to go are not beat over the head with iron pipes, are not taken at the point of gun, are not taken with their lips taped, their arms bound and their ankles bound.

And off to Indianapolis he went with her, having left that note in the Stoll residence, having changed it in the last few minutes to meet the situation, having changed it from Mr. Stoll to Mrs. Stoll. Intended for Mr. C. C. Stoll at first, he wrote, "The same for Mrs. Stoll," and increased his demand to \$50,000.

Then off to Indianapolis with his victim he went. And in the meantime you heard the testimony of what happened here. The maid freed her ankles. Mr. Berry Stoll came home and found the situation that confronted him in that guest room—his wife gone, the blood from her head there on the bed, the maid tied, the pipe there, the ransom note. He immediately called for assistance, and those witnesses who got there first tell you what happened and what they saw.

1958 Mr. William Marshall Bullitt, an attorney of this city, tells you what he saw. Mr. John Tarrant tells you. The police officers tell you. Miss McHenry tells you. The witnesses who, as to the truth of their statements, no question can be raised, saw what they tell you they saw.

Then the note was read.

The kidnapper in Indianapolis had taken his victim, Mrs. Alice Stoll, to his apartment that he had rented under the phony name of Kennedy. He took her in in the nighttime, through the alley, into an apartment where the shades were down. And what does he say about that? "She could have jumped out the bathroom window," he said.

Consider this: Mrs. Stoll entered that apartment without knowing the surroundings. The shades were down. If you had entered this court room in the nighttime, with all of these shades down and if you had not seen through these windows, there would be no way for you to know that there is a court just outside that window, and until you were released and until those shades were raised you would never know it, and that was Mrs. Stoll's condition in that apartment as she testified to you.

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"What was outside the window?" "I don't know, the shades were down."

1959 Oh the defendant knew! Yes, he knew every inch of that apartment and the surrounding territory. He knew what the front entrance looked like. He knew what was beyond that solid door that was the front entrance. He knew what was beyond that window that was covered by the shades. He knew all right. He knew that there was a garbage can on the back porch. He knew those things because he had not been taken there as a kidnap victim—he was not there as a dupe. He had examined that property. You and I now know what is outside those windows. Mrs. Stoll now knows what is outside those windows just as we know that these courts are on either side of this room, but we know it only because we have been able to see what is there.

And the victim of this case says, Mrs. Stoll, and that is corroborated by this defendant, the shades were down. And she did not know and as you can well see she could not know what was there.

"Didn't she go to the bath room," says counsel. Of course she did. And what happened—he sat outside with a forty-five. "Couldn't you have jumped out a window?" And he pulls the window here, and you can see from that plat just where that window is. Consider this: The window he is talking about is right there, members of the jury. The living room is right here, looking into

1960 the bath room. Consider this: He showed you a picture taken from the bed room, looking right into that window. You remember that picture introduced by the defendant. A matter of approximately three steps for this defendant from the living room to that point where he is in direct line with that outside bath room window. And he asked why she didn't escape. He was there with that forty-five and in that small apartment, not over three or four steps necessary for him from that living room to have a direct view of the bath room window he has made so much fuss about. The bath room window that they blame Mrs. Stoll for not going out.

They would have you believe that it would have been

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impossible for this defendant to have stopped her had she gone out that window. But when you consider the smallness of that apartment, and the short distance from the living room to a point where he could control that outside bath room window, I submit to you from that argument that Mrs. Stoll did not escape is one that does not justify consideration at the hands of reasonable men.

And then he begins his further acts of terror. Terror then not only for the family but terror for the victim. Binding her and taping her and placing her in that small closet while he went out to further terrorize
1961 her family, to call her friends on the phone, to write letters, to direct his father that he was named intermediary, and to change the intermediary to his own wife, Mrs. Frances Robinson. Carefully planning, he moved, carefully writing each direction.

"I am the kidnapper of Alice Stoll." That is what he said in Indianapolis in October 1934. That is what he is today, the kidnapper of Alice Stoll.

"I am the kidnaper of Alice Stoll," he writes, "She is alive and well and has only a small cut on her head. Change the intermediary. Turn that money over." Did he say, "My wife"? Was he so unaccountable for his actions that he said, "Give it to my wife, Frances"? No! He addressed this letter to Thomas Robinson Sr., and he said "Turn it over to your daughter-in-law." "Your daughter-in-law." The same words that you would use or I would use to describe her. He didn't say "My wife." No. This was well planned. "Turn it over to your daughter-in-law. She will have to make a trip." And she did make a trip.

And you heard the proof. The \$50,000 was raised here in the Fidelity & Columbia Trust Company. Sent by express as he demanded; valued at \$10.00; directed to Mr. Robinson Sr. and delivered to him and by him to the wife of this kidnapper.

And you have heard that story. She went to
1962 Indianapolis from Nashville and turned over to him the \$50,000 just as he had directed. Just as he had planned. Just as his letters directed.

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And then consider his actions right there when his wife came in. So unaccountable he did not know what he was doing, his counsel will tell you. There was \$50,000 and \$130.00 in that apartment. The \$50,000 in ransom money, and the other money that Frances Robinson had that was not ransom money—not hot money as he calls it; cold money, as he is pleased to call it.

Was he unaccountable? Or was he carefully planning what to do? What did he do? He took from his wife that \$130.00 of cold money. Tossed her a package containing \$470.00 of the ransom money and made his get-away.

Why did he do that? The answer is obvious. He wanted something that was not ransom money, something that was not being checked, something that couldn't be checked, to make his get-away from that hideout.

And before he left what did he do? He wrote to the Custodian. You remember that letter. What did he say he was going to do with Mrs. Stoll? "I want you to discover her. Go to my apartment and you will find her in the closet next to the bath room door." The same one he had bound her and kept her in every day for 1963 that week. "Go there and find her," he said to the Custodian.

But again he changed his plans because his wife, Frances Robinson, wouldn't go with him. She stayed. And he left and he gave them directions, "Don't leave this apartment." And to make sure that they were following his suggestions, his directions, what did he do? He was gone some 20 or 30 minutes and then he bounced right back into that apartment—checking. Putting into Mrs. Stoll more fear. Even after he had the money he was not through. He was still, by his acts, hurting her.

Then in the afternoon she and Mrs. Robinson left and went to the home of the Cleggs, and was returned to Louisville. And what do they find of her condition? You heard Dr. Frazier. Her head was matted with blood; her lips were raw from the adhesive tape; her arms were marked, her wrists were marked, from the wire. Her nerves were shattered. Harmed? Had he harmed her? Without kill-

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ing her, what more could he have done?

You heard her husband testify as to the condition he found her in. You heard Mrs. Stoll describe it. You heard the doctors describe it. You heard her friends describe it. Her nerves were shattered, her face—her lips—her head. Released unharmed? Of course not! Harmed, and harmed by the action of this defendant who **1964** boldly announced "I am the kidnapper of Alice Stoll."

You heard the story of his trips across the continent, of his life in the hotels in New York, his beach cottage at Rye, New York, his trip to Los Angeles and the fine houses and hotels that he lived in, his trip to St. Louis where he met his mother and turned over to her \$4000.00 of money for which he had given ransom money, how he washed it carefully to remove his fingerprints. Unaccountable? Think of those things, Members of the Jury, when his counsel tells you that he is unaccountable. Ask yourself how he successfully eluded the FBI for nineteen months and a day. Unaccountable? Careful, planning, shrewd, changing his name, going from hotel to hotel! What does Mrs. Anna Webb tell you? "He was above the average," she says, "I consider myself above the average but he was head and shoulders above me. He had the answers before you asked the question."

And he traveled with Jeane Breese from hotel to hotel, buying automobiles, spending the money he had gotten from this ransom. Was he careful with it? Was he? What did he do?

In New York at Forest Hills we find him renting that lock box, a storage place. You recall the testimony of the auditor from the Fireproof Storage who helped **1965** him carry that file case in. There to deposit his money, not in a bank where it would be found, but in a storage house. And out in Los Angeles do we find him putting his money in a bank? No. Another locked file in a storage house. Spending his money carefully? No, carefully changing the ransom money to what he calls cold money—telegraphing it from Los Angeles to himself at San Francisco, letting the Western Union Telegraph

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Company become the agency for changing the money, delivering to him in San Francisco good money—cold money.

Careless? Unaccountable? A man who did not know what he was doing? Consider these things when his counsel tells you that. Careful. Planning. Shrewd.

You recall the testimony of Miss McHenry of the telephone call and the letter. You recall the letters written by Mrs. Stoll. Those are important parts of this evidence.

Then we find him out there in Glendale, California, renting the house at 510 Kavanaugh Road. And you heard Mr. Bugas, who was then acting in charge of the Los Angeles office, as he told you how, on May 11, 1936, he with other agents went to 510 Kavanaugh Road. How they got this defendant to the door—and isn't it amazing

—his old pattern there doubled back on him. Mr. **1966** Bugas went to the front door in a pretended character and drug out the kidnapper. A casual passerby, he told you; he had simulated a casual passerby and he knocked on the front door and who answered? Tom Robinson. He brought him with ransom money in his pocket, and a loaded forty-five automatic in his pocket, two loaded forty-five automatics in his bed room, a loaded thirty-eight revolver in his top dresser drawer, and a loaded shotgun standing by the door. Careless? "I had it to protect the money," he said. "To protect it from the FBI?" asked Mr. Brown. "I wouldn't say that," said Mr. Robinson, but he wouldn't say no.

\$4687.64 was recovered there by the Agents of the FBI, and of that money \$2330.00 was original ransom money—all that was left of the original \$50,000—\$2330 locked in a box and the key in the pocket of this defendant.

And he was brought back to Louisville, and later examined by the doctors who have testified to you. The doctors in the institution, the doctors appointed by this court who were subpoenaed as witnesses for the United States.

There are just a few things more that I want to point out to you. I want to point out to you now one of the oldest and best known tricks of criminal defense. And I want you to be alert to watch for this. It is an old

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trick of criminal defense to attempt by every means
1967 to divert the attention of the jury and the Court from the defendant and to place that interest and that attention some place else. Forget Robinson, counsel for the defense would have you do. Forget him, he will plead. Try the FBI. Consider what they did or didn't do. Try the prosecuting attorney. Consider what he did or didn't do. Try anybody. Try Alice Stoll. Try her for not escaping by the bath room window as this athletic young lady did here in this court room. Try Alice Stoll. Try the maid. Try Berry Stoll. Try anyone, if you please, but don't try this defendant.

Members of the Jury, there is only one defendant on trial here today, and that is Thomas Henry Robinson Jr. He is charged with only one offense and that is kidnapping. Don't be misled by that attempt to divert your attention from the kidnapper in this case. That attempt, I am sure, will be made. It is always made.

Consider the similarity of the defenses that has made up the pattern of this defendant. I have pointed out the similarity of the way he entered every home, every time in a pretended character.

But what about his defense? On his forced marriage, the woman is no good. Attack her reputation. On his robberies, insanity. He is released and again
1968 charged with robbery. The women are no good.

What did he say to Mr. Dick Atkinson, District Attorney General, from Nashville? He told you. "I am not afraid of those women testifying against me. I will testify that I took them to the outskirts of Nashville and they voluntarily had intercourse with me. I will smear them."

And in this case do we see that pattern? What does he do in this case? He joins the two—insanity and attack the woman.

What did he tell Mr. Atkinson? "I will testify that I took them to the outskirts of the city and they voluntarily had intercourse with me." What did he tell you about Mrs. Alice Stoll? "I took her into the outskirts of the city and she voluntarily had intercourse with me."

The same old Robinson; the same old pattern. Just as

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true to him as his fingerprints. Get in by a pretext. Get out by attacking the woman. That has been Tom Robinson since the day he stood on the front porch of Mrs. Lamb's home and knocked on her door. And it is Tom Robinson today.

He sat upon that witness stand and told you that he had been intimate with Mrs. Stoll. He offered not one line of proof to substantiate that. Only his own! Only his own!

"Where did you take her?" "To the Beach Grove
1969 Tourist Camp."

"Now at the Beach Grove Cabin", said his counsel, and Robinson corrected him. "Beach Grove Tourist Camp." The Tourist camp you have seen the picture of. The tourist camp where the sign is out front—the place where he said he took her, and the evidence shows, Members of the Jury, that that was a deliberate and diabolical lie, and it cannot be branded anything else. The place was not there. The cabins were not there. The first brick purchased to build those cabins was August 26, 1931, and since last Monday when the defendant took that stand and told that diabolical lie, the Agents of the FBI have been able to produce here in this court records and witnesses—records of the brick company that furnished the brick; the records of Mr. Palmer showing you that no cabin was rented there until October 12, 1941.

And then you saw that attempt to shift, and shift fast, this morning. There was nothing to do. Counsel and his client got together and there was a shift of places. "Get out of that cabin and get up over that garage. My goodness we didn't know all this." And when they found out there was a garage there, "Now we must move, and move hurriedly—get out of those cabins and get up over that garage."

1970 He told you last Monday that he took Alice Stoll on two occasions to a cabin that they rented at the Beach Tourist Camp and those acts of intimacy took place, he told you, at the Beach Grove cabin. That proves that he was a liar on that occasion as he has on other occasions, and he quickly shifted and said "Let's get out of the cabins and get up over the garage."

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What did Mr. Allen tell you? "That is where my daughter was confined. A baby was born to her that summer and as soon as he moved out Mrs. Palmer moved in. Mr. and Mrs. Palmer and four children. Yes, it's amazing that those records were still here; that after 12 years we could go back and find that record of when that brick was delivered or the ledger of Mr. Palmer kept out there. But they were found. The records were kept and the records prove beyond any doubt that when this defendant followed his pattern of attacking the woman, this time he ran into a stone wall. Mrs. Stoll, the one woman of all his victims who has stood up and in a court of law testified against him. The only one who would not be intimidated. Mrs. Stoll who walked in and told you what happened. And he reverts to type, "I am insane, and the woman is no good." Just as if he had spread his fingerprints upon that plea, it is typical of Robinson; typical of this anti-social person; typical of a person, as the doctors told you last night, with criminal tendencies; typically the person with defects and deficiency of character.

There, Members of the Jury, is his weakness. Not a weakness of the mind, the doctors told you. Not an illness of the mind. Nothing wrong with him. In their language they say, "without psychosis". No mental disease.

Then where is his trouble? His trouble is the same trouble as with all criminals, he has no character. He has no firm foundation of character upon which to build life and, having no character, he resorts time after time to the same pattern in this case in the kidnapping, the kidnapping of Mrs. Alice Stoll.

And there is another thing I want you to remember when the counsel argues his case. Remember not only the witnesses who testify, but remember the witnesses who were here available and who didn't testify. Ask yourself, as this counsel points out to you, "the \$25,000 was laying on the divan in that hideout apartment." Ask yourself and ask Mr. Hogan, "Why didn't Frances Robinson come down here and say that? You had her here as a witness." I'll tell you why, because Frances Robinson wouldn't say he did not have it. And, like the attack on Mrs. Stoll, they like

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to say upon the unsupported word of this kidnapper,
1972 "I left \$25,000 there."

I submit to you that the government has shown that he spent more money than that in his wanderings and movements over the country.

Ask yourself, "Where was Mrs. Robinson?" She didn't testify because she wouldn't testify; she wouldn't say that that money was left there. That is the reasonable inference from that. Consider that well. Consider these defenses. He says, "I didn't kidnap her." He says, "She was up there in that apartment of her own free will", and he sets up to show how she could have jumped out the bathroom window.

If he was telling you the truth, if she was not there as a prisoner, why did they so elaborately prepare a bathroom window for the athletic young lady to jump out? If she was not a prisoner there would be no use to even intimate she could escape. If it was necessary for her to escape, then she was not there of her own free will and, having failed in both of those, he falls back to his first love, insanity.

Shifting in his defense just like he tried to shift from the cabins to the garage. His defenses, at one time no kidnapping, at another time she didn't try to escape, at another time insanity—shifting to whatever he
1973 thinks is the present need.

Think of those things. You have seen him these two weeks. You have seen him consistently shifting from one defense to another.

I think I have pointed out to you the outstanding parts of this evidence. You heard it all. You saw the witnesses. You saw Robinson as he testified. You saw him as he fixed the crease in his pants upon the witness stand. As he sat there he told you what has been proved to be a diabolical lie, you saw he didn't bat an eye and you can reasonably assume from that, that having told one, without any compunction told a lie designed to serve his aim and to tear down the reputation of Mrs. Stoll, having seen him tell that lie, having heard him as he told it, and having seen the proof that it could not be true, the reasonable inference is that there is no reason to believe anything this

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kidnapper says in his own behalf. He is here only in his own behalf.

Consider these facts. Consider this crime. Consider the viciousness of it. Consider the punishment that should be meted out. The Court will advise you that you act in an advisory capacity; that if you return a verdict of guilty and recommend a penalty of death, that will be advisory and the court will then determine in his own

1974 mind and in his own wisdom what the penalty should be.

If you return a verdict of only, "We the jury find the defendant guilty", without making a recommendation, then you have tied the hands of this Court. The Court then has no power to impose the death penalty even if he concluded it should be imposed. Return this case to this court giving to the judge of this court the power to, in his wisdom, impose any penalty that he thinks should be imposed. Do that by returning to this court a verdict, "We the jury find the defendant Thomas Henry Robinson Jr. guilty, and recommend punishment by death."

1975 The Court: Members of the Jury, due to the fact that it is now 11:45, and if defense counsel in his argument to you will use the two hours or more that has been allotted to him, it would take us unduly past your usual luncheon period. I have asked the defense counsel whether he desires to break his closing argument into two parts or whether he preferred to give it all at one time, and in response to his preference that he would prefer to make his closing argument uninterrupted by any such break as the luncheon hour it was decided to have the luncheon hour at this time, although it is a little early for you. We will come back correspondingly earlier than we usually do and have the closing argument for the defense counsel uninterrupted in that way, and rebuttal by the Government attorney immediately following.

Accordingly then, we will recess at the present time until 1:15, at which time we will resume.

Do not discuss the matter among yourselves or make up your mind on this case until all the arguments and instructions of the court are in, allow no one to discuss it

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with you or in your presence; avoid contact with anyone who has any interest in this case.

An adjournment was taken to 1:15 p. m. the same day.

1976 After recess, court convened and the following proceedings were had:

The Court: Members of the Jury, counsel for the defense will close the case for the defense with his summation. Mr. Hogan.

Mr. Hogan: May it please the Court, Mrs. Elswich and Members of the Jury:

Whether you know it or not, the Court has imposed or did impose upon me a very heavy responsibility when he asked me on September 28th of this year to represent this defendant. The defendant, upon affidavit, stated that he was a pauper. Now you may say, "Well that was a lie; that was not true." But the Court isn't easily deceived as to that. You may think, "Well, the Court appointed you but we know that that boy has some of that \$50,000 or \$25,000 or whatever it was that he got and that, being a lawyer, you would not undertake this case unless you knew that he had some of that ransom money still hidden away" ready to probably divide with me if at your hands he should procure an acquittal.

But I assure you at the outset that that is not true. As I said, the Court is not to be deceived and I don't think the investigating forces of the FBI are to be deceived
1977 either. As a matter of fact, the investigating forces know where every dollar of that money is or went; otherwise they would have objected to this defendant coming in and asking this court to allow him to proceed as a pauper.

Under the law, I think as His Honor may tell you or may not, but I will tell you, there is no provision in the law for the payment of a counsel for a pauper defendant. It is strange that there isn't and there should be. There is a provision that expert witnesses may be paid. So there has been arranged for the payment to Dr. Solomon and Dr. Crice, his doctors, their fee out of the funds of the treasury of the United States; but I, as his counsel, have not

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been paid anything and do not expect to be paid anything and will not be paid anything.

Now, with that premise made clear to you, what has been my undertaking? First of all, the indictment in this case charges a very grievous crime, a heinous crime. It charges that Tom Robinson Jr., with his wife and his father abetting each other or aiding each other, in the year 1934, October, kidnapped Mrs. Stoll and, while she was held for ransom transported her from Louisville, Kentucky, to Indianapolis, Indiana; that while she was captured, or in captivity, she sustained certain injuries and that when she was released she was in a harmed condition; or, I believe it says that at the time of her release she was not unharmed.

Under the Lindbergh Law or under the kidnapping law if that is true, or if you should believe it is true, you have the prerogative of recommending to the Court the imposition of the death penalty.

Therefore, with that in view, you will see that my position as defense counsel, my duties, have been tremendous. They have been trying and wearing upon me and my system. I have worked night and day as you know, not because I have any financial interest, but because the Court has asked me to do a job, and that is what I have tried to do.

Now let's see about the facts in this case. There has been developed into this case a most serious aspect. It is true that this defendant has kidnapped this good lady, Mrs. Stoll, that in itself is enough. If it is likewise true that he has come before you and maliciously told you an untruth, that is a serious offense in itself and a serious charge upon the character and reputation of a woman of Mrs. Alice Stoll's social standing and reputation. It is such that the damage can never be repaired. I am frank to say that. If this defendant has told an untruth about her in that respect, that is very serious, so serious that I would not feel that I would be justified in representing that type of defendant. But, on the other hand, he says it is true. Now, whether it is true or not, that is for you to decide. I have proceeded with utmost caution in this

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matter. I realized the seriousness of a charge of that nature unless it could be founded upon some reason or some fact. So I demanded of this defendant, first, that he tell me the truth because I did not want to be led headlong into a situation that would backfire.

Therefore, I made him prepare in his own handwriting what he knew or what he thought he was telling me to be the facts in this case. Now of course you know that his statements have not been admissible against him. There is another reason why I cannot read you this statement, and that is because of the existence between attorney and client that confidential relationship which prevents an attorney from divulging facts given in confidence while the relationship of attorney and client exist.

But in his own handwriting this defendant has outlined to me what he says are the facts—

Mr. Brown (Interrupting): Now, Your Honor, I am going to object to that. He testified from the witness stand what the facts were.

Mr. Hogan: I am not trying to read it, and I am not going to refer to it only to tell this jury that
 1980 I wanted to be satisfied in my own heart and mind that he was telling me the truth because he said that he was going to tell the facts to you, of this jury.

If I had felt that they were untrue, I would have done one of two things, not continued in his case or tried my best to keep him from divulging such untruths if they were not the truth.

Now that's all I am going to say along that line. I might say that I believe that he told me the truth. Fantastic as it may seem, I am convinced that he told me the truth. It will be my purpose to convince you that those facts as he has related them on the witness stand which jibe with these facts right here, are the truth, Mrs. Elswick and gentlemen of the jury.

Now, what about Tom Robinson's life? Just what kind of a person is he?

He was born of Mrs. Jessie Robinson in 1907. His father was Tom Robinson Sr. He lived to be a normal boy. That is, his early life was normal. He went to Ross School,

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which, I take it, is or was a grade school. There was nothing unusual about his early life that branded him as a precocious child. He did not steal nickles and dimes from his mother's sugarbowl to go to the picture show. There was no evidence of inclination of petty crimes in 1981 his early make-up.

Now that is important because we have had a lot said about psychopathic personality and constitutional psychopaths. I don't know whether you know what a constitutional psychopath is after hearing all of this evidence that we have heard from the mouths of these expert witnesses. Frankly, I don't know that I know what it all adds up to either, but from what all of them said, I gather that a constitutional psychopath is one that is born with that tendency or trend in his make-up. Some of them said it was hereditary. Others said that it manifests itself in very early childhood, small boys, grade 2, 3, 4, 5—where they would indulge in petty thievery or petty crimes, not the usual pranks of boys or the expression of exuberance in their make-up, which is natural if the boy is natural, but those little out-of-line things, petty thievery and petty crimes that begin to show what type of individual he is in early childhood.

Nothing unusual happened to this boy until he was about 11 years of age. He was in the State of Ohio visiting his aunt. He was kicked by a mule or a horse, I don't recall what the testimony shows, and sustained some damage to the bony structure of his face under his right eye.

1982 Now whether or not that played an important part in his later developments, I am not prepared to say and I don't think that was clearly brought out by any of these doctors. It is only a circumstance in the chain of circumstances in his life.

When he was fourteen or fifteen I believe the testimony shows, he contracted a deep-rooted, severe case of malarial fever. It was so severe (and you must remember he was living in the South) it was necessary for the doctors to administer to him quinine in the arm—intermuscularly I believe they said. In other words, they injected it into his

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system as well as giving it to him through the mouth.

The next episode in his life, not abnormal personality, was the fact that he contracted tuberculosis in a very severe form. He was placed in a tuberculosis sanitarium, and there he stayed for a period of eleven months and during that time another serious malady overtook him, so serious that it added to his already serious condition, pleurisy. A pleuritic condition.

During that time he lost time from his school. After his being released from that sanitarium, he was placed in Wallace Preparatory School, it being thought that he could make up some of the time that he had lost by being in the hospital. He exerted a rather unusual effort **1983** in order to get good grades; and he did succeed in that to an extent that he got fairly good grades in that institution. He lacked one subject of graduating from that institution, geometry I think it was. He then went to Vanderbilt University, and there matriculated in the law class, and he was there some two and a half years.

There was nothing other than those maladies, or those diseases, in his make-up to that point that branded him a psychopathic personality in any degree or in any manifestation whatsoever.

He was well liked. He mingled among the best people in Nashville. He attended dances. He was a friend of James Melton who later became a radio entertainer and singer. He was a member of two fraternities and his life in Nashville and at Vanderbilt was normal except perhaps that he got good grades, and that does not brand him as a psychopathic personality in any manner whatsoever.

And then this tragedy, this shock upon his system, occurred.

His mother, I think mistakenly, she thought properly, purchased for her boy a Buick automobile. That no doubt caused him to be more popular with his young set, the boys and girls, and, as he told you, he picked up this casual acquaintance and from that time on he was always in **1984** difficulty because that tragedy was the turning point in his life, the turning point because it struck him at the very age when he was changing from a boy into a

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man, that weak point in his system, already strained with the pursuance of his studies in Vanderbilt University, could not stand or absorb the shock.

Of course, I do not condone, and I don't expect you to, his actions with this girl that he picked up. It was as unfortunate for her as it turned out to be for him. But what about this girl?

They said he tried to smear this girl. Oh, they build a great big cobweb of suspicion in your minds about him and this girl. They tried to tell you that from that time on he entered upon a smear campaign. But I tell you that the records of the court belie that fact, and I am going to prove it to you. Mr. Brown introduced the records himself from the divorce action involved in that tragedy and, while they are not here, this is an exact copy and if he objects I will ask him to let me have his copy, and I will read from that; and what does the court say about this girl that they say Robinson tried to smear?

The Court says (and I will tell you that Tom Robinson Jr. filed the suit against the young lady because the young lady was charging him with being the father of
 1985 a nine-months child when he had not known her but seven months)—the Court says; not what I say or what the prosecuting attorneys may say, said of this girl and of this case:

"The defendant (that is the woman) has been guilty of such cruel and inhuman treatment or conduct towards the complainant (that boy right there) as to render it unsafe or improper for him to cohabit with her, as alleged in his amended and supplemental petition; that she did, subsequent to their marriage (that shotgun affair that you heard about) that she did subsequent to their marriage falsely, maliciously and wilfully charged him with having committed the crime and felony of rape upon her body prior to their marriage by forcibly having sexual intercourse with her while she was unconscious from the effects of some drug administered to her by him, said charges having been made by her since their marriage to a committee of the Ku Klux Klan for the purpose of having him mobbed or otherwise punished and mistreated by

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the Ku Klux Klan; that in fact (and these are still the words of the court and not mine) the complainant did not administer any drug to her, nor did he forcibly have sexual intercourse with her as charged by her but all sexual re-

lationships had between the complainant and the de-
1986 fendant were consented to by her; that therefore the complainant, Tom Robinson Jr., is entitled to a divorce from said defendant woman on the ground of cruel and inhuman treatment, as alleged in the amended and supplemental bill; that the allegations made in the cross bill filed by the defendant woman, and the cross complaint are not sustained by the proof, nor has defendant woman sustained by the proof the allegations of her answer to the amended and supplemental bill of complaint."

Now that is a record of the Davidson Circuit Court in 1928. Not what I say, and not what Mr. Brown or Mr. Inman have said or may try to say about a smear campaign. Nor is it, Mrs. Elswick and Gentlemen of the Jury, any device or cloak through the arrangement of his father or the District Attorney as they would have you to believe this adjudication of insanity turned out to be.

If they make that charge to you that that was a frame-up, I say that they will come before you and make a direct charge and insinuation against the very system of justice that you are called upon to administer, to-wit: the jury system itself, and I don't think they'll try it.

Now, what were his actions following that tragedy in his life?

Of, course, it did have a decided effect upon him.

It took him out of his place in society. It threw
1987 him into a maelstrom, so to speak, of a cast-off. Qs-
 tralized from society. No friends, not the type that he had been accustomed to associating with. You have friends. We all have friends, or like to think we do. Even at your age in life or mine, don't you think that being deprived of a friendship and companionship of your friends would have a decided effect upon your mental condition? And you are not at the age of change from boyhood to manhood, nor am I. I sometimes wish I could go back to that age.

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Now, what did he do? He manifested the first symptoms of dementia praecox. He changed from a pleasant sociable type of boy to a moody and morose sort of a boy. Those are the first symptoms. He was hurt. The shock to his nervous system, something had changed within. Whereas he was docile and a good-mannered boy before, he turned upon his father. He turned upon his mother. Normal, sane people don't do that. He slapped his mother in a fit of rage. His father properly chided him for it. He went and got a gun and was going to kill his own father and would have done so had not his mother interceded.

Do sane people do those things? Oh you say yes, psychopathic personalities do. Well, do they? Psychopathic personalities or kleptomaniacs, firebugs, etc.

1988 In other words, the wastebasket type—whenever they can't type them they throw them into the psychopathic personalities. That is what I got from all of the witnesses here. I will talk about that later.

He slapped his mother and was going to shoot his father, and his mother noticed a strange stare came upon him, in his eyes. Now had he done those things before this marriage? Don't you know that if he had been one of those petty thievery boys Mr. Wynn, Mr. Connelley, Mr. Moss and other members of the FBI would have gone down to Nashville and dug deep into the wastebasket and found some boyhood friends that would say, "Yes, sir, I knew Tom. Why he used to steal from his mother and steal from his Aunt. That he would go and steal the car out and go for a ride and go to the picture show. Yes, sir, he did that." Did they do that? Where is the evidence from the prosecution on that score.

There is only one inference to be drawn from their failure to produce it and that is that they did not find anything like that or they would have it here. Now that is the first signs of dementia praecox.

We learn he had a pretty good education. In all these mental diseases, schizophrenia, hebephrenic type, catatonic type, catatonic indicating wall climbers, wild hysteria. He is not a catatonic type but he was and at

1989 the time in question before you he was a dementia

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praecox, paranoid type.

There he was, mad, insane stare, a complete change had come over his personality. He tore his shirt to shreds. Got angry at his wife because she had been to the grocery a few minutes, too long he thought, with his own mother. Was there any cause or justification in that thread of evidence or those facts to indicate a sane man? Sane persons don't tear up clothes. They don't have a crazy or glassy stare come over them. There he was—*dementia praecox*.

Did he remain in that state? No: He could have. I believe the testimony is that they could have two kinds, schizophrenia, a split personality—mad today or depressed and moody. Tomorrow a great big superman type.

Now what did he do? He was married to his second wife, didn't have a dollar in the world, got mad at his own people who were sheltering him; went out and rented an apartment for, I think \$45.00 a month, or whatever it was it was more than he could pay for. That in itself branded him as mentally sick or insane if you choose to put it that way, or call it that.

He didn't have a dime in the world to live on. But did that deter him? No, sir, not him. He was a super-
1990 man. Yes. He demanded the necessities of life.

Now I am not unaware that Mr. Brown is going to say that, rather than brand him as a superman, he will brand him as a criminal. But Gentlemen of the Jury and Mrs. Elswick, do sane persons go out and rent apartments and try to keep a wife and then go to the home of a woman in Nashville, whether he had known her or not he had lived in Nashville all his life and he was bound to be detected. What did he do? Did he get an insignificant article of jewelry? No, sir, he didn't do that. He is no petty thief. He went in there and he got the works. The superman! He got it all. He got the jewelry. He said he came for whiskey. He didn't want whiskey.

He took that jewelry to the bank and borrowed money on it.

Would a sane man do that? Because then you must remember he was a child, so to speak, a young man. Why, the banker ought to have known that that boy did not have

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that kind of jewelry. I more or less blame that banker who loaned him \$500.00 on some of those articles.

But he went right down town in Nashville in the midst of all of his friends and acquaintances, and his father was a big bridge engineer, without any idea at all that he would ever be detected.

1991 When he got \$500.00 on some articles of the jewelry, I believe he took the car from in front of the home of the first woman and go to the second woman's home and, under the same guise that he was a peace officer, went into that home and said, "I want to get your whiskey." But he didn't get any whiskey there. That never entered his mind. He was way up in the clouds, riding high. The superman! He wanted big stuff and jewelry and he got it, too.

Was he sane? They say he is a criminal. I say a sane man would not do a thing like that.

Now what happened after that? He mingled down town; made no effort to run away. He was way beyond the pales of suspicion in his own mind. He had not done anything wrong because to him what he had done had no emotional effect upon him whatsoever.

We talked yesterday and the days before about the subjective mind and the objective mind and the unconscious mind and the conscious mind, and I don't think there was any disagreement about that from the doctors on either side. After all was said it was boiled down to this, that you formulate in your mind up here the idea. You probably remember that at home in bed you formulate ideas about your own affairs. You probably have many ideas, and probably some of them were fantastic ideas for the moment, and you immediately dismiss them as

1992 being fantastic. You had willpower. That is a demonstration of the other mind, the objective mind putting the brake upon the fantastic ideas formulated in the subjective mind.

Now we learn that when the subjective mind gets these wild ideas and the objective mind is not in coordination, not working together telling the subjective mind that that's wrong or that that idea is wild, we have an out-of-balance

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make-up. The willpower is destroyed. The idea is there but the will cannot prevent it from going into action.

Now I think it is time right here to mention that one of their own doctors last night best demonstrated that in his own eager, honest, truthful way. Do you remember that little doctor that sat here? The young doctor from the General Hospital? He was so honest, he was wide open with the truth. Do you know what I asked him? I had asked him to give an example of a paranoid dementia praecox. He said, "Well if the demented person gets an idea in his mind that somebody is talking about him, he goes into action." And I said, "You mean he is one of those action birds?" And he said, "Yes, that is what I mean." And I said, "What does he do?" "Why," he said, "he goes to that fellow he thinks is talking about him and he does something." And

I said, "Let's carry it one step further. Let's assume that this demented person, this type of dementia praecox person, gets it into his head that somebody is doing him wrong, blocking his path, has got it in for him, now what does he do?" And do you know what he said? He said, "He goes into action." And then I said, "Thank you, Doctor." He had clearly demonstrated to you, their witness, the typical type of dementia praecox, and that is what this boy was. He was an action bird, a paranoid type of dementia praecox, a grandiose type. A superman, in his mind,—very foolish I think, and I know you do, too, because that condition existed in him and his willpower was destroyed. That is the test that His Honor is going to tell you in his instructions when he instructs you upon the defense of insanity, that even though he knew right from wrong and maybe he did, I will spot you that, Mr. Brown, one of our own physicians said he thought he did and if I didn't admit it I know you would make me admit it. Dr. Brackin says, "I think he knew right from wrong, but I don't think he had the objective mind and willpower to control his actions."

Now His Honor is going to tell you that if you believe this boy knew right from wrong, but did not have that braking power, that willpower, that still will excuse him from the offense charged in this indictment. And if he

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1994 does not do that, all I have said to you, I will take it back. Just remember that. But I am confident that His Honor will tell you that, and I am going out on a limb, so to speak, in making that deduction, and if he doesn't tell you that, that this boy's will was so destroyed, not because he wanted it to be or voluntarily wanted it to be, but if it was involuntarily, unconsciously destroyed and he could not help what he did, then it is your duty to acquit him.

Now that builds up before you, I hope, what is known as a paranoid type of dementia praecox. In other words that constitutes an insane person whom the law says "You may not punish but you should acquit if you believe he is that type."

There are a lot of facts in this case that I don't know whether I am going to have time to cover or not. I thought two hours was going to be a long time and I have been talking here for some fifty minutes already and I have not gotten even started. I hope His Honor will not call me exactly on the hour because I have got a lot to say to you.

He was indicted for these robberies. He should have been. They did not know whether he was crazy or not. He was just another boy. Now don't you know that if his father was wielding the influence, or if the prosecuting attorney was in on the influence, that there 1995 would never have been any indictment against this boy? They would have hushed it up. I think the fact that they come before you and intimate that Dick Atkinson from Nashville, the national Congressman, was in on that scheme is a direct attack upon our system of government.

He was indicted. His attorney says, "I think this boy is insane, Your Honor," and his father evidently thought likewise: Well now the Tennessee law, and the Kentucky law for that matter, when a defense of insanity is imposed and there is reason to believe that he was not sane because he would not have pulled such crazy stunts—the Judge says "Let's see if he is. We have got ways and means to find out. Let's send him out to Central State Hospital for a period of two weeks observation and let those men out there who have the facilities to examine him,

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tell us about that."

Now is Mr. Brown going to attack that procedure? Is he going to say that that was a scheme or device or a cloak? If your boy was in trouble, and you thought he was insane, you would want to find out about him, I am sure.

So he was sent on that period of observation for two weeks, and what does that record disclose? Why there were some young girls here from the high school, and I know that they were frozen to the seat when some of this
 1996 stuff came out. I don't need to repeat it all to you.

He thought Dr. Brackin was against him. He thought he could get a gun and shoot his way out of there, and that somebody was going to bring him a saw so he could saw his way out of there. Why he even said, "I have got a job down in Memphis paying me \$200.00 a month and I am going to get out of here and go down there." Now that was just a wild dream. Nobody ever told him that. Then he said, "I have got another job" somewhere. Now that wasn't true. Nobody had told him that.

Four doctors, Dr. Farmer, Dr. Brackin, Dr. Love and Dr. Johnson, said to the Court, "We think this boy is dementia praecox, schizophrenia, split personality, and too dangerous to be at large upon society." Twelve men, they weren't using women so extensively then, Mrs. Elswick, so they got twelve men of his peers and they put them in the jury box and they heard evidence as to whether or not he was insane. That is what you would expect for your boy. Let somebody—let his own folks with whom he lives, pass upon his condition. Is there any scheme or device in that? I dare you to charge it.

He put his plight in the hands of twelve good men tried and true, so the judgment says, and they said, "We think he is insane and too dangerous to be at large", and the

Court entered an order sending him back to the
 1997 State Hospital. Was that a device? Or was that a scheme. Did we know then that Mrs. Stell was going to be kidnapped or taken five years later? Were they building up to a big letdown? Were they five years before the thing happened building up for a big defense? I don't think there is any need to further comment on that.

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He stayed in Central State Hospital for eleven months. Now if there had been a scheme or device, in about a month or six weeks, if his father wielded the influence they would have you believe, they would have had him out of there. But they filed away those criminal charges. There was nothing in the books to keep him in there. He was as free as a bird to fly out of there, and they couldn't hold him.

Now was his father in on the scheme? What did his father do? His father immediately went into the County Court and filed a proceeding saying, "My boy is insane, or I believe he is, and let's see whether he is or not."

Now I might tell you right there that the County Courts of Tennessee is the court that usually hears and determines the question of insanity. It is only when criminal charges are involved that the Circuit Court or Criminal Court exercises that privilege. The statutes of Tennessee say that the County Court and the Criminal
1998 Court have co-extensive jurisdiction to determine the sanity of a person, but only the criminal court has that jurisdiction when criminal charges are involved and an insanity defense is asserted.

Therefore, when the criminal charges were cleared out of the picture and he was as free as a bird, his father said, "Let's see about it." And twelve good men again said "We think he is insane and should be put away." His father was appointed his guardian. He gave a \$500.00 bond, and his father put him in Western State Hospital or, rather, the court did, and that is at Bolivar, Tennessee.

Now he didn't want his boy taken back to Central Hospital and I will tell you why. While at Central Hospital he had been in the insane ward. It would have been detrimental to the other inmates and it would have been detrimental to his boy to have taken him back to Central State Hospital because there would have been that friction and they were trying, if they could, to relieve his insane condition and I don't believe you can relieve it by keeping an insane person in the criminal ward.

So they took him to Bolivar, Tennessee. Dr. Cocke was here yesterday. He was the superintendent. His father for

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1999 some unknown reason, through pressure from his family or the boy's wife or his mother, or maybe the boy himself, I don't know, went down to Dr. Cocke and said, "I think I will take my boy out of your institution." And Dr. Cocke said, "He isn't ready to go out. He is insane." Of course he typed him as a psychopathic personality, but he was still insane. They were running an insane institution. Dr. Cocke said, "Don't take him out." And Robinson Sr. says, "I am going to take him out, Doctor, over your objection; and I am going to give you a letter relieving you of all responsibility if he should get into any further difficulties," and there is in that record from Bolivar that they read the letter from this boy's father assuming full responsibility for him.

It was a tremendous responsibility. I will grant you, as it turned out to be, and I realize that because that responsibility now is thrust upon me. His father has passed on.

So they took him out of Bolivar, not cured but still insane. He got a job here and he got a job there, and then came to Louisville and worked for the Stoll Oil Company at 2d and Broadway. His services were satisfactory, so far as we know. Mr. Ritchie, the Stoll station manager said his duties there were station attendant and that his duties of course was of filling tanks, and there
2000 was a parking lot in the back, in the rear, to park cars in.

Now I don't believe that he said Mrs. Stoll actually knew him. I think the boy said that she probably knew him or knew him slightly, but that she came there during that period of six weeks and she had seen him on the job. He says it is likely that he knew her. Mrs. Stoll said, "I never saw him before in my life." Whether or not she knew him, that is for you to decide. I didn't know the boy then, and you didn't; and so it is for you to decide in your own minds whether or not they had that mutual recognition or sometimes passed the pleasantries.

Now here is how he looked at that time (showing picture of Robinson). He was a nice-looking boy. He has been through a lot since then. The rock at Alcatraz has

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taken its toll. He was a nice looking boy. Don't you think women would be attracted to him, not saying whether Mrs. Stoll was or not. But he was a type that had an appeal for women. Why this copious lady from California said, "Why he just swept me off of my feet; he was 100% with me. Why, I took him around for a week and he just sold me." And there, again, he manifested that super grandiose type and that is why I asked these questions, and I was building up that paranoid dementia praecox type, or rather, she did for me.

2001 There he was in Louisville. After six weeks he left and it was in evidence and Mr. Brown brought it out that the last day he worked for the Stoll Oil Company was July 10, 1931. Now will you bear that date in mind? July 10, 1931.

On July 11th he went to work as a solicitor for the Mutual Life Insurance Company, with offices in the Starks Building as a debit or route man. In August or September, I am not so familiar with the date but I think it was in August, he went to work for the ABC Distributing Company in Chicago. He didn't stay there long. He didn't stay with the Servel Company but one day. They say eleven days, but anyway it was not very long. He was unstable. Not stable, as Dr. Solomon preferred to call it. He went back to Nashville, I believe, and worked for the business college. He was not stable there. Why? There was something deficient in his mind. He was mentally sick. He was not stable.

He got, or tried to get, other jobs. He contracted syphilis along the route and I might tell you that it was after his stay here in Louisville. The records show that it was in 1932 that he received treatment for that. It was after

he had worked here in Louisville, and I want to impress that fact upon you. It was after he had worked for the Stoll Oil Company here at Louisville.

2002 He went to Chicago and worked as a janitor. He worked in South Bend. He tried to get employment and he couldn't get employment anywhere. As he told you, "I got so proficient in the art of applying for jobs that I wrote a book."

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Now isn't that a crazy thing to do. A man who couldn't get himself a job was writing a book telling others how to do it. Why, he even did that in Leavenworth. He wrote Mr. Bate at Leavenworth and said, "Why I think I am qualified to write a book on how to help parolees get a job."

Now that was just branding him as a super man or a demented person. I don't know why you introduced that letter, Mr. Brown, because that was just building up for me the dementia praecox with the paranoid tendency.

And he said he wanted to get out and be associated with the very woman who had turned him up. Does a sane man do those kind of things? Run back to the woman that had thrown him into the penitentiary, and we are gonig to talk about that some more. Where is she?

Paranoid, insane, demented—even after he was through this court and said one word, "Guilty."

He couldn't get a job. He came back, I believe the testimony shows, and went to Mr. Stoll and said, "Mr. Stoll, give me another job." And Mr. Stoll said, "No, we have

2003 a policy here that does not permit us to take back persons who voluntarily sever their relationship, so I can't do it."

It is in evidence that following that, Mr. Stoll wrote him a letter of recommendation, highly recommending him. There was no reason, if he had been sane, to believe that Mr. C. C. Stoll was his enemy, but he imagined that every place on earth he went that Mr. Stoll had been there in person or by letter because he had given Mr. Stoll as reference and he imagined these references were coming back from Mr. Stoll unfavorable to him, and what did he do?

He went into action. He is an action bird, so the doctor from the General Hospital says, their witness.

But before that time he told you, and it is not disputed because they know it, that he was the reincarnated spirit of Patrick Henry. Of course he wasn't but he believed that he was, because his middle name was "Henry" and he had read in history what Patrick Henry was. He felt himself an inspiration, as he told you on the witness stand,

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and he looks back on it now and can see that he was in a sort of a haze or a daze, to go into action against that fellow whom he thought was doing him, he thought, and that person was Mr. C. C. Stoll.

Now, of course, there are a lot of other things that he did, they are going to say, "Why, that indicated perfect normality—he ate, he slept and went from place to place." But that is no manifestation of a sane man. This paranoid type works on the systematized delusions or one delusion. "Systematized" means fixed ideas or ideas based upon false premise, as Dr. Crice and Dr. Solomon told you—and Dr. Brackin told you what that term meant. It is an idea based upon a false premise. It is systematized. It is always there.

Therefore, Stoll was riding uppermost in his mind, so he decided that it was a patriotic, Patrick Henry, thing to do to go into action against C. C. Stoll and do something about it, and that resulted in this document, the ransom note, being written.

If I had the time I could go through this ransom note and point out to you in minute detail the things in here that brand him as a paranoid type. Let's see what some of them are, just for example.

"Read this letter and we mean business"—in other words, "I am somebody and you have got to listen to me, I am a super-duper," as they say. "We want the money." Now there is a typical example, he was speaking in the plural. "But if you let the police know the details of this letter or where payment of the ransom money is to be made, or if there is any evidence that you mean to double cross us by sending a dummy package or watching the intermediary named in this letter or otherwise trying to set a trap for us, we are prepared"—there is the plural again—"This is no idle threat," and he underscores it.

The planning upon this letter is paranoid manifestations, reducing himself to writing, showing that he was a paranoid type. An action bird. "However the capitalist" and he capitalizes "capitalist" in order to make it stand out to show that capitalists to him—and Stoll, he thought,

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was a capitalist—maybe he was, I don't know—was working against him. He thought Mr. Stoll and the capitalists had the Lindbergh Law passed and of course we know Mr. Stoll had nothing to do with it, but that boy in that delusion thought he did. It was an idea based upon a false premise that C. C. Stoll had the Lindbergh Law passed—he called him an octopus. An octopus is one of those mammals with a lot of feelers who will grab you if you don't get out of the way. A dictator. He underscored "octopus" and "dictator."

Then he said he was going to "put Stoll in a vat and put acid on him," and just completely obliterate him. That was a crazy thing. But that idea was certainly in his mind—insane delusion—paranoid type.

Throughout this whole ransom letter he is branded **2006** ed as a dementia praecox. Really, I don't see why they emphasize that letter because when they do they are just emphasizing how crazy he was.

He prepared the letter in Indianapolis. He came to Louisville on October 8th and went to the C. C. Stoll home. You see, he went into action. He was going to carry this stuff out here. He didn't find Mr. Stoll. He used the telephone ruse to get in there. He went next door. Why, I don't know unless he thought Mr. Stoll would be there. He didn't do anything that day but he was an action bird and he goes back.

He goes back on October 10th and he went to see Mr. Kottke and he said, "I know the way out there, I have been out there by way of the River Road but I haven't got my bearings and I want to know the way to get out there, and I want you to direct me how to get out to the Berry Stoll home." Well Mr. Kottke got on the phone and he found out and sent him on his way.

He went out there to Mr. Berry Stoll's home and there—that was about 2:30, I believe. It takes about thirty minutes to go from Bardstown Road out there. And he went out there and encountered the maid. From this point on I am going to assume, for the sake of argument, that there was an unlawful kidnapping; and then I **2007** am coming back and I am going to presume that

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there was not an unlawful kidnapping. So let's proceed, then, on the idea that this was an unlawful kidnapping. Now he went there. Now I am going to take the government's side because that is the side that they are going to take and see what happens. He went in there and said, "Your telephone is out of order, let me see it." That gained him entrance. The he said, "Who is on the place?" The maid said, "My husband is away for the day and Mr. Stoll is gone." A perfect set-up for the kidnapping. He says, "Have you got an extension here (and I am still taking the government's view). The maid said, "There is an extension upstairs and Mrs. Stoll is up there and see if you can go up." So she went up. He says, "Go up ahead of me, maid, and get on that extension and see if we can fix it. I believe if you go up there we can fix this thing." The maid says, "He put a gun to my back and instead of going to the bedroom where the extension was he went to the guest room, where Mrs. Stoll was."

He went in and what were the first words said there on that occasion? Mrs. Stoll says, "What are you doing here?" Now does that have some significance? If she had never seen him before I am sure she would have said, "Who are you?" or "What do you want?" But she said, "What are you doing here?" indicating some acquaintance. He then said, "I am here to kidnap you." There was
 2008 some evidence that there was some discussion, she offered him a check and he didn't take it and he carried out his threat.

He bound the maid—there is always a maid, it seems, to these kidnappings. There is always a maid to fit into the picture. He gagged and bound the maid. He put tape over Mrs. Stoll and bound her hands. She was then dressed in just house clothes; she got her coat out of the closet—whether she got her coat out of the closet or whether he got it, that is not material, and she covered her person.

Before that, they tell you, that they got into an argument and he hit her over the head with an iron pipe, and where is your pipe, Mr. Brown. He rapped it on the table the other day and it scared the stenographer to death. Now there is the pipe and I say if he hit her, he was cruel;

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hitting a poor, defenseless person—he was either cruel or as crazy as a junebug. He hit her over the head, not once but twice—now I am arguing the government's case. The blood flew all over the earth—all over the room there. The maid said there was a big spot, Mrs. Stoll says it flowed freely, Mr. Marshall Bullitt, the biggest lawyer in these parts, says he saw a spot of blood this big, and another witness said he saw a spot of blood this big, Capt.

Messmer was there and saw the blood, the coast-
2009 guardsman was there and he saw the blood and saw the ransom note that the maid says was pitched on the bed and Berry Stoll said, "I found it on the floor," and how it jumped from the bed to the floor I have never known, but there is a contrariety of testimony. But that is not material now. But where, oh, where are the fingerprints on this pipe? Where are they, Mr. Brown?

There is not a single word of testimony in this case that they lifted a single fingerprint off of that pipe, and I know if I were not stating the facts correctly you would jump up and correct me. Now if you have got any fingerprints, get them or forever hold your peace. Where are the evidences of fingerprints on that pipe? Not a word about it. And who was there? Mr. Messmer, the Captain from Ft. Knox who was in charge here in Louisville; he was a fingerprint expert, he was a ballistic expert, and a chemist, where is the great FBI, Mr. Wynn, any fingerprints on the pipe? No fingerprints on the pipe. Where is the evidence of the blood. You say—all your witnesses say there were two big spots of blood. Mrs. Stoll says, "I bled like a hog." She didn't say "hog," she said profusely. You farmers know how hogs bleed.

Where is that coat with the blood on it, if she were hit with a pipe? Where is that bedspread with those great big saturated spots of blood? I don't know. They
2010 have got the pipe. Where in the world is the chemical tests of the blood, Mr. Brown? Why, you have gone from New York to California, you have gotten fingerprints off of the telephone, you have gotten fingerprints off of the ransom note and your man Knowles said it couldn't have been made by any other person than Thomas

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H. Robinson. He didn't say Thomas H. Robinson Jr., and he said it a half a dozen times, Thomas H. Robinson. And there is no tangible evidence that a fingerprint on the ransom note, or this bunch of junk here or anything in the world you have here, came from anything that that boy touched. Mr. Wynn, I am ashamed of the FBI.

Where in the world—they bring a fingerprint expert down here, Mr. Knowles, he sang that stuff out there. He was an expert. Twelve latent fingerprints, four potent fingerprints. We had a specimen of his fingerprints. They had him down there on May 13th when they arrested him, they had a genuine specimen of his fingerprints and they sent all of that stuff to Washington and they had that man come down here and bring all of his contraptions and they proved the fingerprints was that of this boy's father. Why, Mr. Wynn I am ashamed of you, I am ashamed of the FBI.

Where is any evidence of blood. They might get up and say, "Well, that was 9 years ago. The boy plead **2011** guilty; we destroyed it. Why didn't you throw the pipe away then if you destroyed the evidence. If you didn't think you needed it, why didn't you throw the pipe away? They brought a piece of pipe in here that the boy never touched. I have got a little piece of pipe here myself. Why didn't you prove that he hit her with that?"

Mr. Brown: If he had, I would.

Mr. Hogan (Continuing): They didn't prove he ever had his hand on that pipe. Mr. Brown and the FBI fell down completely on the job. Where is the blood? They have got blood experts. They brought a blood expert or a chemical analyst down here from Washington and kept him down here a week and put him on the stand and said,

"Did you make any analysis of that blood?"

"Yes," he said.

"Where was that blood?"

"On the ransom envelope—one of these envelopes, a brown envelope, I believe."

"How big a spot of blood?"

"Oh," he said, "a little spot about that big."

"Did you make a test of that?"

"Yes, sir."

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"Was that blood?"

"Yes, sir."

2012 Then they turned him over to me, and I said, "Mr. Chemical Expert, is that human or animal blood?"

And he said, "I can't tell."

They brought a man all the way from Washington down here to—

The Court (Interrupting): I believe that was brought out on direct examination, not cross.

Mr. Brown: It was, Your Honor.

Mr. Hogan (Continuing): Well, it was brought out. They brought a man down here from Washington to tell you about a little bitty spot of blood, and it turned out that he couldn't tell what it was. Now, all they had to do, if there was as much blood as they said there was, to take that bedspread and just wring it out and get a cupful of blood, and then they could have proved whether it was Mrs. Stoll's blood.

Where in the world is the blood? Do you believe that he hit her with that pipe?

And where is the coat she wore, dripping with blood. Saturated with blood, dripping for 24 hours. Where is that coat? I don't know. It is not for me to prove. You were asked upon your voirdire examination that if there existed any reasonable doubt in your mind, you said you would acquit this boy. Now isn't there some doubt?

2013 Now from the aspects of that blood, isn't there some doubt?

Now let's assume that he hit her with this pipe, and there was that blood out there, and Marshall Bullitt went out there and what did he do? One of the biggest lawyers in the State of Kentucky. He goes to New York and spends lots of time—I know because we are in the same building together. He makes big fees—he made \$700,000 fee in one year and the government took 90% of it away from him. He goes out there and he says, "I saw that ransom note and it was in one page." Why, it has got two pages. Mr. Bullitt must be losing his grip. Two great big pages of a typewritten note; and he was the one who took the G-men

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out there. He saw one page of the ransom note.

All right, here we go with Mrs. Stoll in the car. She said she was bound and gagged and had a blanket put over her, and I asked her when it was about the time she got to where the bridge might be if the car didn't stop and I believe she said the man said "okay." Then I asked her if she tried to whimper or cry out, and she said no. There was a man on the platform looking right down into that car. If she had have been in distress she could have cried out. That bridge attendant had a big gun on him. If she had cried out that bridge attendant would have said,

"Look, boy, what have you got in there?" But
2014 where is that blanket or laprobe, or anything in that apartment.

They found his car in Springfield, Ohio. They brought that peace officer down here and that tourist home woman. There was no evidence at all of any blanket in that car. Where did that blanket go. Was she covered?

On the way down Market Street, one of my witnesses, and I am not so proud of him, I will admit. I had never seen that boy before. That fellow said, "I saw a fellow that I later knew to be Robinson and when this case was tried and I saw Mrs. Stoll's picture in the paper I recognized her as being the woman I saw with Robinson." Now, as I say, I had never seen that witness before, and I thought the government had me in the box with that witness because they proved he had been arrested for grand larceny and convicted and jailed. But I thought that when they were digging at him that they were going to come in here and prove that he was in jail in October 1934 and if he had been that would have ruined my case, but the only thing they had on him was that he gave two different names on a driver's license, and that he was living with some woman and not married; and that he put a false answer on his questionnaire, and they are here to condemn him about that, and let's see about that. He said he did not fill his

questionnaire out and that it was rather complicated.
2015 He said a friend of his filled it out. I say, when a person puts his name on anything and signs it he is presumed to know what he is doing. I say, don't

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ever put your name on anything if you don't want to get in trouble. But they are condemning him for what turned out to be a patriotic thing for him to do. He did not want the government to know that he had been convicted of a felony. If he had wanted to stay out of the army, he would have put it in there in capital letters, "Convicted of felony in the Taylor Circuit Court," and he would have been an unwanted person in the army. You come in here and say he was a big liar and he did this and he did that, the fellow who indirectly tried to get himself into a uniform not because he made a false affidavit but because he did not want to try to stay out of the army. He wanted to get in there where your boy and your nieces and your nephews are.

Does that make him unable to identify persons? I don't know if he was there. He might have been a crank trying to get into this case, but he did come into my office, and I had never seen him before, and I was rather cautious. I put him through the hoops to try to see if he was telling the truth. Of course, I didn't have the investigating facilities that the District Attorney has.

I think you have noticed throughout this trial **2016** the handicaps I have worked under. Here is Tom; there are two Marshals right behind him now. When they take him out of here, he is handcuffed. There we sit—Tom and I. He is no help to me because if I want to use the phone I have to stay in here until 12 o'clock before I can go out. I did have my wife in here helping me but the flu knocked her off. I have been under a tremendous handicap. Just like last night in trying to run down Mr. Carlisle, and they talk about kidnapping! The FBI kidnapped a witness and I directly charge them with that.

Mr. Brown: Well I will say he was subpoenaed and been here like every other witness the last three days. If you will look at the record you will see that Mr. Carlisle has been subpoenaed here just like every other witness, and your accusation is absolutely false.

Mr. Hogan (Continuing): Why didn't you put him on, then? You knew what he would say. Carlisle said, "I was in the FBI office for two days, and I couldn't go anywhere unless they went with me." Mr. Carlisle has not done any-

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thing. He has not been arrested for anything. Falsely imprisoning a witness. Suppressing the evidence from you members of the jury of a defendant with his life and liberty at stake. It is the most reprehensible piece of work that I have ever heard of in a court.

The Court: Mr. Hogan, I don't think your **2017** statement that the witness was falsely imprisoned is borne out by the fact at all. I am sorry to have to interrupt you but I can't let a statement like that go unchallenged when there is no evidence to support it.

Mr. Hogan (Continuing): Well, Judge, I will tone that down a little bit and say that he was in the FBI office those two days, and that when he went out an officer or an FBI Agent was with him, and I am sure he did not ask for that protection.

So there we are—no blanket, going to Indianapolis, still proceeding with the government's side of the case.

She got in there and she was so nauseated and so sick as a result of that blow from that pipe that they couldn't connect up, and yet the very first thing on earth she did was to cook some scrambled eggs and ate them and her own cooking made her sick. Sick before she got there, sick from eating scrambled eggs from her own preparation and it made her sick.

There is no evidence from Robinson, and there is no evidence from Mrs. Stoll that he tried to molest her one iota in that apartment. Is there any evidence of any intention of this boy to smear Mrs. Stoll? If he had been on a smear campaign he could have come in here and **2018** told you that they just had all kinds of relations in that apartment. He didn't do that. He is not trying to smear her. As I have told you, I insisted that he tell me the truth, or what he thought to be the truth, before I would let him go into that stuff. I don't like it. But I call your attention to the fact that there must have been some spark of gallantry in him or he could have come in here and told you, "Yes, I had relations with her, she is just lying."

The Court: Mr. Hogan, I don't like to interrupt you, but you have had approximately an hour and a half. I

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thought you contemplated using only two hours and if you are we can go on and the jury can remain in the box. However if you are going to go over two hours, possibly two hours and a half, probably we should recess.

Mr. Hogan: I would like to have about an hour longer.

The Court: All right. Members of the Jury, I am sorry to interrupt the argument at this point, but you have been in the box for quite a long while and I think maybe you should get up and walk around and make yourself comfortable for a few minutes.

Don't discuss this matter among yourselves or with anyone or the argument of counsel on either side in this case; the case is not yet over. Let no one come in
2019 contact with you who is interested in this case in any way.

After recess Mr. Hogan continued with the closing argument as follows:

Mr. Hogan: Now I believe that we had arrived at that point in the kidnapping, taking the government's side of the case.

There she was in that apartment. She was not there just a few hours; she was there for seven days—Wednesday night, Thursday, Friday, Saturday, Sunday, Monday, Tuesday—seven. Not all, of course, of the first day or of the last day.

She says she was hurt. Assuming that she was, she says she was never denied access to the bathroom, and that the boy never went in there with her—of course he didn't. There is a view of that bath room. And we simulated it here the other night. The toilet seat, the radiator, the window. Why their own drawing isn't even accurate because it leaves out the radiator, making it easier for her to get up here, and the window has a ledge to it, that would have helped her. Why, it wouldn't have been any trouble on earth for her to have stepped up here and here and right out that window.

Now they tell you she couldn't see out there. That is one of those opaque windows on the bottom. Why,
2020 she is five feet three inches tall. She could have stood on this seat and if she had been any woman at all,

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with any curiosity at all, and every woman's got it, she would have taken just a little just a little bitty peep to see what was on the outside.

I asked her if she really wanted to get out of there and I believe if there had been a real honest-to-goodness effort she could have looked out because she had six or seven days of daylight. The water flushed in the bathroom, the bathroom faucets were turned on in the basin and in the tub and she could have carefully raised that window and looked out that window and she could have seen what was going on.

She could have done better than that, and I will tell you why. She could have attracted attention without ever saying a word or looking out the window. How could she do that? I assume there was paper in the toilet and she could have found a pencil in that apartment and she could have gone in their quietly—oh, I know you are going to say he would not have let her take the ink in there, but she could have taken a pencil and written a note on a sheet or two of that toilet paper and when Joe Johnson or those garbage men came to get the garbage and could have held that paper up, stood upon this seat and held this up to this window and made a little noise and all she would
2021 have had only to say on there, "I am Alice Stoll. I am the kidnap victim."

Everybody in Indianapolis knew about that kidnapping because she said herself that Robinson brought the papers in and that they turned the radio on, and everybody in the country knew that there had been a kidnapping.

Did she try to do that? Seven days without an effort!

She said, "If I had tried to raise that window, he would shoot me through the door because he sat right outside there with a gun." Now just look at this picture. Now there is the bath room door. There is one of those thumb locks on it. She admits there was, and if she didn't, Joe Johnson says there was. She could have thrown the bolt and it would have locked him out.

She says, "Well, that wouldn't have done any good." Well let's see about that. This linen closet, or whatever it is, is out of range of anybody sitting back there on the

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sofa, and she could have gotten behind that linen closet and been out of range of the gunfire from Tom Robinson, or anybody else. Did she do that? Why, she didn't even clean herself up. She says she came out of there with a mass of blood on her head. What kind of a woman was she? She was in the bath room, and the doctor says all that

he did was to wash the wound with soap and water, **2022** and I want to know why she didn't do it. A woman of social prominence—why she didn't even take a little soap and water and get it off of there, if she was hurt. That is one of the mysteries of this case.

There is that apartment. She says the blinds were all down. The FBI knew all about it,—not, perhaps, where she was, but they had Van Landingham, one of their own Agents, living across the court and if he had been any kind of an FBI man at all he would have smelled a rat. There is something wrong over in that apartment across there and I believe that is where that woman is. Where in the world did Van Landingham go? Where is he? Why didn't he investigate all the shades being down? Can you answer that? I can't.

Let's go back to that window again. Joe Johnson, 169 pound-heavyweight, 20 inches across the shoulders, was brought in here by the government, and I said, "Well, Joe, did you ever go through a window like that?" And he said, "I sure did. Why, they had one tenant in one of those apartments that had a window like that who was always leaving her key in there. I went in that window many a time."

Mrs. Stoll weighs 119 pounds, and is 5 feet three and in order to demonstrate to you that she could have **2023** gone through that window, I had a window prepared; and Mr. Brown said it hasn't got a screen in it, and no lock, and the lady hasn't got on a dress. So I said, "Go home and get a dress on." We brought her in here and she had had infantile paralysis and he thought she was an athlete. That young lady who had had infantile paralysis and skimmed through there and I want to call your attention to the fact that she had to with one hand hold that window up which was a handicap because that

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window has got window weights on it and stays up, but in order to be fair we tried it without any window weights; and she removed the screen with one hand held it, and held the window up with the other hand and went through there like a cat. Now if she could do that, why couldn't Mrs. Stoll, if she really wanted to, have gotten out too.

Now she was held there in that apartment that had all kinds of broad windows. She says the shades were down. Why, I say she could have grabbed a shoe or a lamp and thrown it out one of those windows and made the biggest racket in the world—she could have heard somebody going by there and hollowed. He says she used to stay there and he didn't tie her up until she bucked over the traces and after all the publicity came out—she says she had the run of the house.

Now, this morning Mr. Inman said she couldn't
2024 have gotten out of that bathroom but I have just shown you how she could put that note or message up to the window and Joe Johnson said the garbage man comes there at least twice a week, sometimes a colored man and sometimes somebody else, three times a week. Now there were two garbage cans right outside there and another can that they kept slop in for the hogs and another colored man came and got that. Why all in the world she had to do was when she heard those garbage cans rattle was to stand up at the window and made a little noise and got out of there.

Then he was gone for 19 months and the great FBI had to hide behind the skirts of a woman who had turned him up.

Mr. Inman said this morning that she couldn't have gotten out of there, that if she had Robinson would have seen her, but she says that the blinds were all down. If she had gotten out that window Robinson could not have seen her because if her testimony is true, the shades were down. Now there is something inconsistent there.

Well, she didn't get out, and Mrs. Robinson arrived on the morning of the 16th with a package, and I say to you that the government failed miserably on that. Why do I say it? They had that money starting from Louisville.

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Johnny Tarrant going to a depot in Louisville and
2025 they got it down to Nashville in a safe and if you follow the evidence, the money is still down in Lackey's office. That is as far as it got, right in his office because the only other thread of evidence is that Frances Robinson, the wife of this defendant, arrived at that apartment with a package.

Mrs. Stoll says that it was ransom money. They never have shown that this boy was given that ransom money. If we assume that the package was ransom money, and we will assume it, that is as far as they got. Now she got there with the package. Now they have got to prove that they had the money in that package. Of course he came along later and said that he got some of the money. They had to make out their case on his testimony. Where is the great FBI again.

Now Mrs. Stoll said that Robinson gave his wife some money, and Mr. Brown says, if I am wrong correct me, on page 524, Mr. Brown said, "Was that ransom money," and she said, "No." And he knew that she had given the wrong answer, or, rather, had given an answer that he didn't want and he asked her again and she said, "No, that was not ransom money. It was money that my people had given her for expenses."

Again they fall miserably down with the testimony.

2026 So Robinson leaves; he is gone. He says he gave her \$25,000. I don't know whether he did or not. That is not important—let's see. Mrs. Stoll said that Robinson left after he came back and that Mrs. Robinson was there with her, and Mrs. Robinson went out and got some beer and some sandwiches. She did not then say or presume to say that she was then prevented from getting out of there or going anywhere because Tom Robinson was gone and Frances was gone to get the beer.

"Well, Mrs. Stoll, did you drink any beer?"

"Only one bottle."

"Didn't you drink two bottles of beer?"

"I don't recall that I ever drank two bottles of beer at one time in my life."

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And then I went down and found where she had testified before, and I asked her again, "Didn't you say you ate one sandwich and drank two bottles of beer," and she said, "I guess I did."

I am just calling that to your attention to show whether or not the lady is worthy of belief. Drinking beer and talking about trivial things with Mrs. Robinson, right there in that apartment. Was she hurt? Robinson says that she drank several bottles of beer every day or occasionally.

Maybe she didn't. But if she wasn't so sick or so
2027 hurt—people who are so sick do not indulge daily in beer guzzling.

And where did they go? Mrs. Stoll and Mrs. Robinson started out up the street and went to a drug store. Now Mrs. Robinson wasn't trying to harm her. Where did they go? They got in the drug store and what did they do? Did they buy any medicine or call a doctor? Not a bit of it. They called a taxicab. I asked her, I said,

"Mrs. Stoll did you make any purchases in that drug store?" She said she didn't.

"Did Mrs. Robinson?"

"She didn't."

"Did you call the FBI or the police?"

"No, I thought this woman might have been a confederate."

Now how could she think that when she was sitting in that apartment drinking beer with her, and talking about trivial things.

They went on to the Cleggs, and did they call the police? Not a bit of it. What did they do? They called a preacher, they called Reverend Clegg. He came after a while, and I mean no reflection on him, and he started with them to Louisville.

Meanwhile, Mrs. Stoll had called whom? She didn't call her husband and she knew, or had reason to
2028 know, that the FBI were there at the Stoll home, and did she call her own home? She did not. She called Miss McHenry. And Miss McHenry's testimony is not that she called Berry Stoll's home but that she conveyed the information to the Stolls when she got out there that

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night, and she got there at seven o'clock.

And I asked Mrs. Stoll if the reason she did not call the police was in order to let Tom Robinson get a head start and she said no. Why didn't she call the police at the drug store in Indianapolis, and why didn't she call the police or Berry Stoll at the Clegg home?

That is just one of those unexplainable things unless she did feel sorry for this boy and let him get away. The Cleggs were her own people by marriage through her husband, and Frances was her beer-drinking partner. All of these FBI agents went down, they were following Frances' Robinson with the money, but they did not have Frances' interest at heart; they lost Frances—the bloodhound lost its trail. They didn't protect Mrs. Stoll to any degree because she got to Scottsburg before the FBI ever appeared on the scene. She could have been waylaid by this confederate, if she was, but she wasn't.

Then she got on home. It looks like they did a very poor job of controlling or protecting her.

2029 Now the boy is loose. He is gone. Everything he ever did on earth branded him as a paranoid. He went right into New York, the New Yorker Hotel, the Ritz Carlton, the St. George in Brooklyn and the biggest hotels in Los Angeles.

They produced a specimen of his handwriting from the TVA and all in the world that they could have done, with all their expert equipment and training, they could have gone and compared that genuine signature that they had—the first place in the world to look for a boy with \$25,000 we say, they say \$50,000, is a place where he could spend it. All they had to do was to go in there and check the signatures at the hotels. They didn't check a single registry so far as I know; and what did this bird do, this great long criminal record bird here, as they say? Why, he went to the polo grounds with thousands of people witnessing a ball game with his friend from Rye, New York. Does a sane man do that? Or does a criminal man do that? That place was full of policemen, Cribari says. In there but maybe not in uniform. He had no idea in the world that he was wanted. He was living in a cloud, as crazy as a junebug.

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Now that was the most foolish thing on earth, to present himself in a crowd of that sort or register in those hotels.

2030 Was he crazy?

Coming back to the Cleggs, Mrs. Stoll picked up another coat. She had one coat and I don't know why she needed two. When she got here she said she had \$470.00 the FBI had taken off of Mrs. Robinson, yet she said over in that apartment that Tom Robinson had not given Frances Robinson any of the ransom money. There is a big bag in the testimony somewhere. He didn't give her any, and yet she shows up with \$470.00.

Why did she have that extra coat? I don't know. Maybe it was to wrap up this big hunk of money that I asked the maid about being in the chair the next day.

Was Mrs. Stoll sick?

Mr. Connelly was there, Melvin Purvis was there, and another FBI Agent whose name doesn't come to my mind right now was there when Mrs. Stoll was delivered home that night. Head all bruised—bloody head. Yes, and Berry Stoll was there, too.

And Fowler Woollet said that she was so nervous the next day she couldn't write her name; Mr. Berry Stoll said she was a wreck. Woman of wealth. Father Chairman of Board of a lot of institutions here. What did she do that very night? She took a pen and ink or some writing instrument and wrote her signature or, rather, her

2031 initials Alice Speed Stoll 94 times on 94 five-dollar bills.

Could she have been so sick or so hurt. And they are asking you to fry this bird's hide because when he turned her loose she was in a not unharmed condition. A woman whose father has got plenty of money. She comes from that great long line of people—J. P. Speed was her grandfather, and yet they would interest themselves in such little pecuniary details as putting her initials 94 times on 94 five-dollar bills that night after she got home, and they can't deny it. They brought it out.

And what about her condition? Mr. Connelly was there. He was on the stand. Did they presume to tell you that

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she was hurt? No. Did Miss McHenry? Yes. Mr. Purvis was there but now he is in North Africa. Agent Kerr was there. Did he tell you about any cut on her head or any bruise on her skull? If he did, I don't remember it. If I misquote the facts, Mr. Brown is right here to correct me.

There is a total lack of evidence except from bias witnesses, her friend Miss McHenry, her husband and the doctor.

Now let's see what the doctor said. He said, "I washed it off with soap and water, put new-skin on there; the cut had healed and grown together. Did he ever
 2032 take any x-rays; if he had been any doctor at all he would have taken some x-rays. Now let's find out about that head. The next thing I knew he had gone out of town and left his patient.

Now what did they do with the Woolets? They did not want anybody there that night. Why, I don't know. They took them and put them in her mother's home on Cherokee Parkway, Mrs. Speed's home.

"Did you want to stay there, Mrs. Woolet?"

"No."

"Did you want to stay there, Mr. Woolet?"

"No, my wife was hysterical."

"Couldn't you have taken her away?"

"I didn't."

And the next morning Mrs. Speed said, "Mrs. Woolet, you and your husband can go back to the Stoll home."

They went back. I asked Mrs. Woolet if Mrs. Stoll didn't embrace her,

"Why, she did not."

"Did you find any money under the pillow?"

"I did not."

"Didn't it disturb you, a great big sum of money with a band around it?"

"I didn't see it."

2033 "Did you consult an attorney or make any claim?"

"No."

Then I went along. "What happened Saturday?" A lot of things happened and it was finally brought out that

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she appeared before the Grand Jury on Saturday and went home, and Sunday got fired—she and her husband. They had enough testimony to produce this indictment, and then they fired her the next day.

Did they treat her right? Of course not.

Fowler Woollet said that he spent all of his money. Couldn't get a job. Where he went this thing followed him. He couldn't get a job.

Then on September 9th, just a few weeks before the Robinson Sr. trial and the Frances Robinson trial here in this very court room, Fowler Woollet and Ann Hobbs Woollet go to the office of Joe Hayse, an attorney in this city, and Ann Hobbs Woollet says, "I have never consulted an attorney; I never made those statements in my life and I do not remember it." I wish I had time to pick out—her answers were stereotyped, "I don't know;" "I don't remember;" "I don't recall"—but on direct examination she remembered everything. Well, did she make that statement? Mrs. Woollet, "I don't remember going to his office."

Then I called her husband in, and he said he had consulted Mr. Hayse about a claim and then what happened?

2034 It developed that they got re-employed by the Stolls and Berry Stoll paid Dudley Inman his fee and everything was hunky-dory—they kissed and made up.

Now we can't prove, because that's a gap, that they made up before the trial of Robinson Sr. and Frances Robinson, but there is a circumstance in the chain of testimony that they went on September 9th and made affidavits so they had something in their mind on September 9th, and they didn't go back to work until after the trial.

Was that significant to you?

And then when I confronted Ann Hobbs Woollet with her affidavit and she said that that was her signature, she then said, "Well the relationship of attorney and client existed, and I am going to hide behind that privilege, and yet she denied that she had ever consulted an attorney because if she hadn't have done that I would have made her read her own affidavit about all that money she found—

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Mr. Brown (Interrupting): I object to that.

The Court: The affidavit that she made I have already ruled on and it is not admitted in evidence, and the contents of it I don't think you should refer to, Mr. Hogan.

Mr. Hogan (Continuing): All right. I will merely say she said she signed the affidavit and she said
2035 that that was her signature. Under the rules of evidence we can't let it come in. I only wish it were possible to do that in this kind of a suit because I think you gentlemen of the jury, and you Mrs. Elswick, ought to know the truth of what she said.

Mr. Brown: Objection.

The Court: Now I think the objection is well taken, Mr. Hogan. You invoked the rules of evidence when you thought they should be invoked, and I sustained you. And the government invoked them when they thought they should be invoked and I sustained the government. Those rules are formulated and are in existence for the protection of trials and to enable the jury to receive proper evidence. I don't think it is proper for counsel to comment upon the fact that the rules are unfair. You both are using the rules and they have been invoked by the court indiscriminately when he thought they were proper to be used.

Mr. Hogan (Continuing): Well the only thing then is of course the fact that the maid signed that paper. Then—

The Court (Interrupting): While we have been interrupted here, I may say, Mr. Hogan, that you have had two hours and possibly you should designate how much longer you are going to take.

Mr. Hogan: Would you seriously object if I
2036 took forty-five minutes more?

The Court: That will run us into conflict with the evening hour. Suppose we compromise on a half an hour?

Mr. Hogan: Then I have got 30 minutes more?

The Court: Yes.

Mr. Hogan (Continuing): Now we get back to this money proposition. She got back with \$470.00 of the ransom money that she said Tom Robinson didn't give his wife. Mr. Speed said that she got back with \$506.00. Berry

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Stoll said she got back with \$470.00, and so did the FBI.

They got Tom out in California, and got some money on him and what does he say they got back from there? Mr. Speed, off his guard, said \$46,000, and Mr. Brown says, "No, you mean \$4600 and something, don't you?"

So we have got this money turned around until I don't think the government itself knows who had it. In other words, who's got the money. She said she didn't have any ransom money and she turned up in Louisville with it. Her father said they got \$50,000 back and she said she brought back \$470.00. Mr. Speed says he got back \$46,000 and Mr. Brown said no you didn't, you got back \$4600 and some-odd dollars.

This is the craziest cock-eyed case about money
2037 I ever saw in my life. Nobody is straight on the money.

Now, was there any kidnapping? That's the government's case in all of its ramifications.

He says, on the other hand, that he went there to get her and she said, "I will go with you." He says on the way over there she was pleasant, that they listened to the radio and read the newspapers and he went out and left her there and if he had been lying—he told you all the time she had the run of the house, and I think you saw his demeanor on the stand and told the truth as he saw it. He was pleasant and tried to answer as correctly as he could.

And he tells you she got a little out of line and he tied her up the last two days. He says he gave her \$25,000. I don't know. I wasn't there. Maybe he did and maybe he didn't. He says he did. He says he didn't hurt her, and she said there was nothing wrong with her, and they did not prove that the pipe was bloody.

And that reminds me of a case in 1926. One of these mysterious kidnapping cases. Aimee Semple McPherson was an evangelist in California. She had a big tabernacle and she was a very popular evangelist. Aimee went away one day and forgot to come back. Gone about a week and here she came in and she had been kidnapped and it turned out that the radio man at the tabernacle was involved in that, and I don't know that that mystery

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was ever cleared up.

Now this boy says he didn't kidnap Mrs. Stoll, but if he did I will say that everything he did constituted him as an insane person because no sane man would have done one of the things that he did.

What about California? He was out there. The FBI said they were trying to find him. I believe they could have found him in any hotel because he stayed at the hotels from time to time. And then a woman turns up. She went down and told the FBI—she said to Mr. Bugas, "If I reveal the whereabouts of this fellow will you not follow me?" They evidently assured her that they wouldn't and they didn't evidently. She called at four o'clock, at the appointed hour and said, "If you will go to this number you will find him." They went there and got him.

I asked Mr. Bugas if they didn't make a deal with her, that if she would turn him in that they would take him to an insane asylum, and if they didn't say he was crazy, and he said no, that didn't happen.

I don't know where Jean Breese is. But they brought everything else down here. They brought Mrs. Van Houten down here who said they lived next to her two months in an apartment, and then they asked her to point him out and she looked around and said she didn't see him.

2039 And they brought a man clear from California whose street address was wrong and he couldn't testify.

Where is the woman? Cherchez la femme, find the woman. They have got a picture here. Where is Jean Breese. Are they afraid that if she were brought into this court that I would make her admit that she turned him in because she was afraid of him because he was crazy? Did they arrest her? Did they prosecute her. I haven't heard of it. A great to do was made here because that might not be a federal case but if I know my law it is a federal offense to harbor a fugitive. Did they arrest her? They knew she was with him because she told them she was. Why didn't they bring her into the court room and let her tell you that Tom Robinson was as crazy as a junebug, as I believe she would if put on this stand. In fact, I know she

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would.

They brought him back to Louisville; they did not even take him before a United States Commissioner in California. That is a necessity. There was not a word of evidence that he ever signed or waived his extradition papers. They brought him on an airplane; kept him awake all that time. Put him over here in the Starks Building in a cage like a monkey, and didn't at all let him see any lawyer, plying him with questions, wouldn't let him sleep. Mr. Dewey says, "I knew he had been adjudicated insane."

2040 He didn't have a lawyer, and they brought him into this court not on May 12th but not until the afternoon of May 13th, and he was handcuffed. And Mr. Dewey said, "I know something about the Constitution; I went to George Washington University two and a half years."

And I said, "What Department are you connected with?" And he said, "Department of Justice." And I said, "Mr. Dewey, do you think it was justice to treat a man like you treated that man when you were in charge of that office in not allowing him counsel and knowing that he had been insane and that he didn't have or presumably did not have any right to make any decision or to make any plea?"

Well they took him to Atlanta and—after they had threatened him and he had said one word, "Guilty." He had no lawyer, mother was hysterical, his father was in an intoxicated condition. And away he went to Atlanta, Georgia, to the federal prison.

He stayed there long enough to get situated, just long enough to get on his way to Kansas, Leavenworth. There they put the psychiatrists to him and he came in here and I tore him down; and I want to call your attention to the fact that that must have been one of his first psychiatrist cases because he said he was engaged in the practice of psychiatry about eight years, so that must have been one of his first cases. But that is not important.

2041 Then they took him to Alcatraz Island, the torture chamber of America, as Tom says, and he ought to know. The French have a colony that you have probably

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read about. It, likewise, is a hell-hole of creation.

What have they done to Tom Robinson Jr? This great FBI? They have brought him into this court, a crazy man and knowing him to be crazy and denying him counsel and let him plead guilty and spent seven years or more behind bars—over six years in that torture chamber of America, that rock out in the Pacific Bay in violation of his constitutional rights of you men and you, Mrs. Elswick. The Department of Justice did that to one of your fellow men.

They are going to say that the thing to do, that a man who had committed a crime, is to punish him—not merely to punish him but to deter others so that others will know that they can't commit crime and get away with it.

Now I want to say to you, how would you feel when your son, if he has the misfortune to come back from this war, or some relative, in a demented condition, his nerves all shattered; and if he should do something that was insane or do some crazy act that the authorities would say that that was not an insane act but was a criminal character act, don't you feel that if your son or your dear one should be treated as this boy has been mistreated, don't you

2042 think that he has been unduly, illegally and unconstitutional²⁰⁴² dealt with? and severely punished at the hands of the Justice Department, and I emphasize "Justice Department"?

And when you go out into your jury room to consider this case, I want you to consider that he has already been punished, and they are now trying to kill him. Is that justice?

I believe and I want you to take this case and tell this Justice Department that they can't do a man that way and get by with it. We are fighting this war to uphold the constitution. It has been kicked about too much, and if our boys are fighting for the kind of treatment that the Justice Department gave Tom Robinson, something ought to be done about it. You, by your verdict, ought to tell this Justice Department that you are not going to have the opportunity if my son or my relative comes back and is insane and does some crazy thing, "You cannot treat him

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unconstitutionally and deny him his rights and get by with it because we are not going to stand for it."

That leaves the situation down on the Dixie Highway. Now this boy says, "I took Mrs. Stoll to that place." I regret that it is necessary for me to go into this phase of the case, but the charge here is so serious and the situation is so serious that I feel that it is my duty to to comment upon it.

Now, they say that there were not any cabins down there until October. Well, that's true. They likewise tell you that he left the Stoll employment on July 10th and I asked you to bear that date in mind a few minutes ago.

Now they brought a man in here and he said a man's wife had a baby on July 11th upstairs on that place and that this boy could not have been there. Well he testified, and I have got it marked, that when he took Mrs. Stoll down there, and I don't know whether he did or not but I believe he is telling the truth, that he was still employed at the Stoll Oil Refining Company, and Mr. Brown supplied the date by saying, "Didn't you leave there on July 10th?"

So, with that in mind, he must have gone down there sometime between the first part of June and July 10th.

Now, what did they say? They said there were no cabins there. Now Robinson has never said there were any cabins there. Here is what he said:

"I did meet her downtown in the city one afternoon; I think I was still employed with the Stoll Oil Company at that time." Now he had said just before that he had met her on a previous occasion and so this referred to the second time. And then I think I led you into the error of believing that he went and stayed at a cabin down there.

Mr. Brown: I suggest that the transcript be read without comment.

The Court: Read the transcript and if there is any question—

Mr. Hogan (Continuing): "We drove out the Dixie Highway to a spot that I know as the Beach Grove Tourist Camp." He did not say cabin. I emphasize "camp".

"How did you get out to that camp?" Then he said,

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"We drove in a car." Then I said, "What happened at the Beach Grove Cabins?" Now I said "cabins", and I profess I probably led to all this situation. "Is that what you said it was?" And here is his answer: "The Beach Grove Tourist Camp." He did not say "cabins"—I said "cabins". "On one other occasion we went to the Beach Grove Tourist Camp. That was twice we went there."

Now I brought Mr. Carlisle in here to prove that there had been a place down there that had been rented out as a place for tourists and I am as convinced as I am standing here that that is what that boy referred to. He
 2045 didn't say he went up any steps. I didn't ask him that. I did not know anything about the situation down there, and I am sure that you didn't ask him anything about going up steps on cross-examination, and I defy you to find where you did; and I defy you to find where he said he stayed at Beach Grove cabins.

He said further, "About that time I quit the Stoll Oil Company and took a job in the Starks Building with the Mutual Insurance Company of Baltimore. I had a debit which gave me time off in the afternoon to do as I pleased and during one afternoon of that period that I was in Louisville, I would say in the early part of July to the middle, we went over to Indiana, Jeffersonville," and there he did say "cabins", and let's see if he didn't make a distinction about what he said about a camp down there and cabins over in Indiana. He said, describing this place in Indiana:

"It had a store in connection with it, and the main office"—now if he had been trying to cover up do you think he would have been dumb enough or foolish enough to minutely detail the situation over here? because he knew what the government could do—he knew they could check behind him. Look at all this array of stuff that they brought in here.

"They had cottages back there (cottages,
 2046 not camps, but cottages) and we registered there as man and wife and took one of the cottages in the rear and stayed during the course of the afternoon and returned to Louisville and during our stay—" I won't read

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the rest of that.

"Was that the last time that you met with her during that month?"

"That was the last time I saw Mrs. Stoll until July. Yes, I left Louisville sometime in July or August of 1931 and went to Chicago.

And here they bring a man by the name of Palmer from Tennessee and he didn't get this thing until some time after July 13th. He said, "The paper was dated July 13th, but I didn't sign it because the man in the bank was somewhere else, and I didn't take over until about the first ten days in August."

Now at that time Tom Robinson was in Chicago at that time trying to get a job with the A.B.C. Distributing Company. Doesn't that clear him of that suspicion?

Now, let's see about Beach Grove. I am hot about that Beach Grove and I don't mind telling you.

The Court: You have five more minutes.

Mr. Hogan (Continuing): They hide Mr. Carlisle. The FBI has him. Now I will tell you why I was late last
2047 night. I went out to try to find him at his place and I found out that they had him here, subpoenaed as a witness and he hadn't come home. And they had his affidavit and I don't mind if you read it and I dare you to read it because it will tell you the truth. I had to get a Deputy Marshal last night after I left this court, and go out there and find him. The government closed their case and they knew something was going on and they had the FBI following me and the deputy marshal—

The Court: Now you are going outside of the record.

Mr. Brown: That is the most untrue statement that's ever been made.

The Court: There is certainly no evidence before this jury of anything like that. You must stay within the record.

Mr. Hogan: All right Your Honor. At any rate, I found Mr. Carlisle. He was so scared that he wouldn't tell me what the facts were; and I had the Marshal subpoena him, and I said "I want the truth; I don't know what you are going to say, but come in here and say it. Let's have it."

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And I found out the first time this morning what he knew and that was that he had down there a place where tourists were accommodated; and they bring in a picture here showing by Mrs. Palmer, I believe, I am sure, 2048 showing a sign that was not erected until after the lady took over; and by their own testimony that was in July or August 10th, and this sign shows "Falls City". You know what Falls City is—that's beer. Made right here in Louisville.

Now I know that you know that beer wasn't legalized until after President Roosevelt took office in 1932—he took office and it was not legalized until after that. You remember they had the radio on and everything and everybody was happy. Beer had come back; Roosevelt had put beer back and yet they have got a picture here they claim was erected in 1931 with "Falls City" advertised on it. Does it add up? What do you say about that, Mr. District Attorney. Are you trying to deceive this jury and crucify this defendant? Are you withholding and suppressing Carlisle's evidence because you want to kill him after you crucify him?

And now before I close I want to say this to Mr. Wynn. He has sat here—he is a very nice fellow. He has looked at me and he has stared at me and he reminds me of a setting dog. I have got a Llewellyn setter that I think the world and all of. He is getting kinda old—he is almost nine; he is getting pretty feeble. I know that Wynn knows how to set; I am going to put a tail on him and a leash 2049 and take him down in Marion and Meade and Taylor County and Spencer County and put him out in the field to hunt birds for me when this old bird dog of mine passes on.

I never saw such unjust practices as resorted to in order to gain a conviction. I think you, by your verdict, ought to rise up against that because it could happen to one of you or one of yours.

The Court: You have one more minute.

Mr. Hogan: I say, he is going to get up here and paint this man as a besmircher of character, a smearer of women, but I don't think that anything can undo the dam-

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age that they have already unconstitutionally done to him.

I am not to get one dime out of this case, and I don't expect it; but I do expect justice.

Now there sits his dear old mother. Dr. Solomon says he has got tuberculosis. Are you going to kill him by your verdict by recommending the death penalty? Or are you going to kill him in an indirect way by sending him back to prison where he will die of tuberculosis.

I say he has been punished sufficiently.

The Court: We will take a short recess. Do not talk about this case among yourselves or with anyone or permit anyone to discuss it in your presence.

After recess court convened and the following proceedings were had:

2050 The Court: Gentlemen, are you ready for the closing argument?

Mr. Brown: Yes, Your Honor.

The Court: We will have the closing argument for the Government.

Mr. Brown: May it please the Court.

The Court: Mr. Brown.

Mr. Brown: Mrs. Elswick and gentlemen of the jury. I want to thank you for your attention during the two very difficult and tedious weeks. It has been both difficult for you, for the Court, difficult for myself, and also difficult for Mr. Hogan, defense counsel. That is according to our American process of Government, and it is a fair process, and I think we have seen here demonstrated beyond the peradventure of any doubt, the fact that, at least, whether, as charged by Mr. Hogan, we do not succeed, we at least attempted to afford the defendant a fair and impartial trial. We have seen here practiced to the utmost the old dodge that has been often tried, when the law is against you, argue facts, and when the facts are against you, argue the law, when both the law and facts are against you, try everyone else except the defendant. That we have had in this court house for the past two weeks.

I am determined, and it was perfectly obvious to me, at least, that in Mr. Hogan's closing argument he

2051 was attempting to incite Government counsel to go

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to a length that no fair minded prosecutor should go—I have no intention of falling into that trap. This record is going to be as free from error as I personally can make it, and you have seen the action of His Honor and he manifests the same intentions. That is my intention up to this point, and it shall continue to be my intention throughout the closing moments of this trial. You have listened for two weeks very patiently, many times through harangues by me and by opposing counsel, and I do not intend to prolong this trial any further.

There is a very simple issue, Mrs. Elswick and Gentlemen of the Jury, and that is, whether this defendant is guilty of the crime charged. If he is guilty, you have a further duty to determine in your mind whether the facts justify a recommendation of the death penalty, and if you do give that recommendation to the court, it is then the court's duty and prerogative to exercise the authority vested in him to determine what should be done with this defendant. When I was qualifying each of you, I asked the question of each of you, "If under the instructions of the court, if the facts as developed from the witness-stand justify it, will you recommend the death penalty?" Each of you said you would. I relied on that as showing no mental reservation on your part, if you feel the facts
2052 as testified to from the witness-stand justify it, not to tie the hands of the court in what he feels should be done to this defendant.

Essentially, the facts are very simple. On October 10th, 1934, Mrs. Stoll was kidnaped after being brutally beaten. She was bound and gagged and thrown in the back of an automobile and taken to an apartment in Indianapolis where she was held for a period of six days. There again she was gagged and bound with wire and locked in a closet. As a result of a ransom note this defendant procured fifty thousand dollars, and for the next nineteen months he traveled his way under many aliases and in many different vehicles of transportation, across the continent at least three times.

In May of 1936, he was apprehended. At the time of his apprehension he had a loaded shotgun, he had two

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loaded 25's, he had a loaded 45 revolver, and there was found also in the house a loaded 38 pistol, which to my way of thinking, ladies and gentlemen, shows the intention of this defendant all along to do exactly what he did do.

Now, if the facts as developed are those facts, your duty is clear.

What is the defense, ladies and gentlemen? The defense is a very simple one. First, he did not kidnap anybody. If he did not kidnap anybody, your duty
 2053 is equally clear. You should return a verdict of "Not guilty." He, himself, and his counsel, did not have much confidence in that defense because they wanted to interpose something else, and so, as an added stop gap, they interposed the defense of insanity. That was this defendant's old dodge. This defendant and his counsel apparently have lost almost all their faith in that plea because in the closing argument Mr. Hogan mercifully drew the veil over the testimony of his own expert witnesses and abandoned that theory entirely. He has now adopted the theory that it wasn't a kidnaping, plus the further fact that this defendant has been brutally treated by everyone that he has come in contact with. Also in the closing argument, for the first time, the blame was laid on somebody else. The blame was laid on the banker who loaned \$500.00 on some stolen jewelry. That is the first time the banker has been blamed. We have had the F.B.I. blamed, we have a young woman in Nashville who suffered that grievous experience in 1927, his second wife, Frances Robinson, has been blamed, his father has been blamed. His father is no longer here to defend his reputation. He has been blamed. The F.B.I. has been blamed. I have been blamed. Everyone except the defendant has been blamed, with what this defendant did, and yet his own witnesses at all times in response to my question said this defendant
 2054 knew right from wrong and fully realized the consequences of his own criminal acts.

You heard me mention some days ago, the *modus operandi* of a criminal. It was defined as that method of detecting the perpetrator of a crime by comparing the methods he had used in other crimes. I hope some mem-

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ber of this jury is a member of one of the public utility companies, the telephone company, the light company, the gas company. You will realize more fully when I say what a place an honest public servant comes to occupy in the minds of most decent, law-abiding people. He assumed a disguise that was almost bound to get him anywhere he wanted to go. Would you expect the telephone man whose services you come to rely upon, would you suspect a gas and electric man whose services you have come to rely upon, or wouldn't you admit them to your house without question. That, gentlemen, is not an insane act. That is an act of great understanding and shows great knowledge of people.

The defense has shifted every time the facts have gotten too strong for him. They shifted early in the trial when it became apparent that they thought they might have something on a division of the ransom money. Of course, all we have to do is mentally to calculate in our own mind how much Robinson testified to that he spent going back and forth across the country, how much he had given away to members of his own family, to see that that amount
2055 very quickly passes \$25,000.00.

But there is another significant fact in this case, gentlemen, and I waited in vain for Mr. Hogan to mention it. He asked me, "Where is Jean Breece?" I don't know. I'll answer that perfectly frankly, "I don't know." I ask him, "Where is Frances Robinson?" I couldn't put her on the stand. She has been here. I subpoenaed her on his behalf. She has been here for two weeks under subpoena, apparently ready to take the stand. Now, in all the world, ladies and gentlemen, there are only four persons that know exactly what happened in this case from first-hand knowledge. There is Ann Woollet, there is Mrs. Alice Stoll, there is the defendant, Tom Robinson, Jr., and there is his wife, Mrs. Frances Robinson. The Government couldn't put her on for the reason that no woman can be forced to testify to any act that took place during their marital relations. At the time Mrs. Frances Robinson, Jr. delivered the ransom money to this defendant at Indianapolis, they were man and wife. This defendant knows,

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and this is the reason why he didn't put her on—this defendant knows that Mrs. Frances Robinson wouldn't countenance for one moment this unholy story of a division of the ransom money. That, ladies and gentlemen, is why Hogan and Robinson, Jr. didn't call Mrs. Frances Robinson to the stand. If they had wanted Jean

2056 Breese, all they would have had to have done was to have asked me to subpoena her for them. Many of his witnesses lived beyond the hundred mile limit and so could not be subpoenaed at the expense of the United States. I realized that this was an important case, important certainly for the Government, and, oh, so important to the defendant, and I decided that I would afford this defendant every opportunity to subpoena any witness that he wanted, and I informed him, and it was done, that any witness this man wanted subpoenaed I, on my own responsibility, would subpoena them and have the United States pay the full charges. So if Jean Breese could have added anything, Mr. Hogan would have asked me to subpoena her and I would have as gladly subpoenaed her as I subpoenaed every other witness that he and his client desired.

Let us discuss the insanity theory first. As I say, Mr. Hogan in his final argument all but abandoned that theory, just being dragged in by the heels at the last moment, but we must discuss it, and I think that the best way to discuss it is just for you to recall in your own mind without my repeating it here, the testimony that has gone from the stand, the methods this man used in obtaining this money, avoiding apprehension until he disposed of all but a small amount. And I think that a very short quotation will recall to your mind how true that statement is.

Our Lord Jesus Christ said, "By their fruits ye
2057 shall know them," and "Does a fig tree bring forth thistles?"—and in this scornful question spoke as an aristocrat of intellect and biologic truth. Apply those sayings, members of the jury, to the acts as shown by this defendant in his own testimony and by the uncontroverted evidence produced by the Government. Very few of the facts that were introduced by the Government have been controverted, very few of them. Recall them to your mind

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when you reach your jury room.

Now let us get back to the *modus operandi* theory. The smear campaign. The first chance, the first opportunity, that his own vicious character could come out, was in this marriage to a very young girl in 1927 in Tennessee. I am reading from an exhibit which has been introduced and which is the bill of complaint, which is signed by Thomas H. Robinson, Jr. and Thomas H. Robinson, Sr.:

"On further investigation he (Robinson, Jr.) found that around that date said young woman had had sexual relations with several different men other than Robinson, Jr. From the facts developed and what he already knew, that is the date of the birth of the child and his relation with the young woman, he was forced to the conclusion that the child did not belong to him and that a gross fraud had been practiced upon him by said young woman and her mother and aunt in her presence." A vicious trial
2058 was had, and then the jury returned its verdict.

"Question 1: Is someone other than Thomas H. Robinson, Jr. the father of the child called (and the name)?" The answer of the jury was: "No."

"2. Was the representation made by the young woman, or by her mother or aunt in her presence and with her approval, to Thomas H. Robinson, Jr., after he had been placed under arrest and shortly before the marriage, to the effect that she was a virtuous and chaste girl except for her sexual relation with Thomas H. Robinson, Jr., false and untrue?" The jury answered: "No."

We have the first evidence of a smear campaign. The years rolled by. His character stayed the same; as one or more doctors said, an anti-social person with criminal tendencies and character deficiencies. How true we have seen that to be in this case in the last two weeks. His own witnesses, Dr. Brackin, Mr. Atkinson, says that in their opinion at the times they knew him he knew right from wrong and fully appreciated the consequences of his own deliberate acts.

Let's see what this defense means in this case. He has entered a plea of not guilty for a number of reasons—general defense, insanity is one, there was no kidnaping

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is another, in the third place, if there was a kidnaping the victim was returned unharmed. He has gone
2059 further than that. He said he is sane now. So what does that mean, ladies and gentlemen of the jury, if your verdict be "Not Guilty." He walks out of the court room a free man. He is sane now. He has made that claim. The doctors that have examined him said that in their opinion he was sane, and is sane, as of October 11th, 1943. This man walk out a free man to resume whatever acts he desires to resume. On past performance, those acts will not be good. On past performance, the mothers and the fathers of young women are running a terrible risk.

Let us examine a little further. Mr. Hogan has asked that I answer a number of questions. I am not going to do that. They are not necessary. Most of them fall of their own weight, and the others that I can answer and probably should be answered will take too much of my time when I have much more important things to call to the attention of this jury. You are tired, and I am tired, and the responsibility for this case will very, very shortly pass from my shoulders to the Court, and then to you, Mrs. Elswick and gentlemen of the jury, and I pray God that you will be guided in your deliberations for the sake of all of us.

Let us examine here a little further, and then I am going to close. We found in 1934, this man charged with other crimes. We found prior to the time that he jumped out of a window when the sheriff came to arrest
2060 him and he fled to Chicago, that he and his father had had a talk with the District Attorney General. Mr. Atkinson was asked this question: "Mr. Atkinson, directing your attention to a threat to ruin the reputation of those girls, did you have any conversation early in 1934 with Thomas H. Robinson, Jr. in the presence of his father, Thomas H. Robinson, Sr., and I will ask you if Thomas H. Robinson, Jr. did not say in substance that he, Thomas H. Robinson, Jr., was not in the least fearful of any of the three girls prosecuting him since he would testify they had gone voluntarily into his automobile and had gone to the country with him for the purpose of having improper

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sexual relationships, and that he would ruin their reputations." The answer from his own witness was: "Yes, sir."

Now let's for a moment consider what Robinson himself said about the time that he left Louisville. I am going to show you what a clever defense it was, what a vicious defense, and how difficult it was for the Government to meet. This defendant is a very smart man, he is a very crafty man, and he developed his defense as the Government put in its case, and he develops it in as clever and intelligent manner as any defendant in the eight long years I have been in this office.

He got on that stand and for the first time testifies to these so-called sexual relations with Mrs. Stoll.

2061 He had to go just far enough, and not too far. He had to paint a picture just vivid enough to implant that idea in the minds of the jury and of the public, and not go so far that he would allow me to discredit him, so he mentions one place, and only one place, that could be identified. That was very clever. And he only mentioned it in such a way that he thought there would be no possibility of attacking him or reaching that story in any way. The only place he mentions is at the Beech Grove tourist camp. He mentions that twice. Then he tells another story of some other place that he vaguely hints at, but doesn't identify absolutely. That was very clever, as I will show you in a minute. He also, on his direct testimony, had testified that he left Louisville sometime in July and August, 1931. That was very clever, and I will show you why. I was going to leave it there. Now, if anything could possibly happen to disprove his theory of the Beech Grove tourist camp in June or July, and I hammered on the fact that he left here in July or August, he knew that all he had to do was shove up the instance a little bit, the Government's hand would be disclosed, and the inference would still be there and be supported by his own word. So I had to be equally careful when I examined that man.

I knew from his other testimony that he knew exactly when he left Louisville, he knew exactly, there

2062 wasn't any question about it. He can recall names and dates and places with a celerity and accuracy that is

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amazing to me which placed his entire life under a magnifying glass. I knew he had something in mind by deliberately misstating when he left Louisville. I suspected what it was. I didn't know. And so on cross-examination I couldn't disturb him too much. I couldn't arouse his suspicions too much. He would place this incident at a time and at a place that no power under God's green earth could disprove. And so I had to go just far enough to get him tied down and then attempt to disprove that story. So as his counsel pointed out to you, hoping, I assume, that I would overlook it that Robinson left Louisville in June or July, I asked him on cross-examination, on page 1190 of the transcript: "Now then, Mr. Robinson, I will ask you if immediately after you had been employed by the Stoll Oil Company, you were not employed by the Mutual Life Insurance Company as a Collector from July 11, 1931, to September 12th, 1931." Well, he knew that that much of his previous story had been caught up. He hoped no more of it had been caught up. So he answered, as of course he knew, he would know the dates better than I did: "I think those dates are correct." So we have him in Louisville, which we could prove, and he knew we could prove it, he lied purposely, and I will show you in a moment, that he was in Louisville only from June 1st, 1931, to September 12th, 1931.

We had this story. It was very clever. We had this story that was the pattern of every prior smear campaign he ever started. I didn't know until the time he took the witness-stand that that story would come out. I suspected it. On prior history, it was bound to come out. He had done it every time that he was charged with crime where he had no other recourse. The only time that he didn't use it was in the robberies of Mrs. Lamb and Mrs. Waggoner, and at that time he escaped into the defense of insanity. Now that was the only time he hadn't used this smear campaign.

I suspected shortly after I began to study this case in September of this year, when I knew that I would have to direct the prosecution again, that that story would be told in one form or another. I only hoped it would be

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told in a manner and in a way that it could be disproved. I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll what she would probably have to face. I told her that I didn't know it, but I suspected it. I can see the horror and the disgust and the loathing that came over that little woman's face that night. That had

2064 never occurred to her before. You saw her, "Someone has to do it. I might as well be the one." And so, I put her on that stand. You saw her, how shaken she was. You heard her story. If I have ever heard a truthful story, that was one. I did not know at what moment the attack of smear campaign would start. On cross-examination, I had some indication of it. Mr. Hogan asked, "Did you know this defendant in 1931?" I told her that 1931 would be the time. She said, "No." "Didn't you meet him on the River Road in 1931?" "No," she said, "I did not." They dropped it at that, they didn't dare go into it with her because her indignation would have been such that it would have blasted any story of such kind before any decent jury. So it came out, as I knew it would, in a manner that I knew it would, that would be hard to me, that he would give us just enough so there would be no suspicion cast in the minds of the jury on that, but not enough for us to tie to, and so he glibly, unctiously, told that loathesome story that I knew was untrue on the stand and he just went far enough to give a hint here and a hint there, and he said the Beech Grove tourist camp. That was all we had. We didn't know where the locale would be, whether it would be in Louisville or Indiana, or Ohio, or Tennessee. Out the Dixie Highway, the Beech Grove tourist camp. He mentioned it twice. He gave us no other indication of any place. That is all we had. We

2065 left the court room that night, Monday night. It looked bad. Surely it did. You know it did. Fifty per cent of the people won't believe a woman though she is a good woman. It will have to be disproved in such a way that there will be no doubt this man was lying. So we went back to my office. We had very little to go on, and I prayed God that our feet be swift and our minds keen

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and our hearts strong, because unless we could break that story down before the time that it came to submit this case to the jury, a good woman's reputation would have been forever blasted. Oh, but Robinson was clever. We found that out quickly. We found his counsel had been out there checking—it is safe to use the Beech Grove tourist camp, the Government has taken it over, the Beech Grove camp is no more. It had to be placed in 1941. That's the only time he was here in Louisville long enough to persuade anybody that any such vile act could occur. The Beech Grove tourist camp is gone.

We found a man named Allen and some people named Palmer operated that place. They are not around here any more. It is safe to use that. We found that out that dreadful night, that the people named Allen and some people named Palmer had operated the Beechwood Inn in May, June, July, August and September, and some people had operated that and changed the name to the Beech Grove tourist camp. We were stymied how to find a person
2066 named Allen, how to find some people named Palmer.

When there was, oh, so little time left. So we started out all that night to work, and we finally found some people named Palmer had operated a tourist camp in Nashville. We checked there and found they lived in Atlanta. We found a man named Allen that had operated it now lives somewhere in the Portland Avenue section of Louisville. That's all we had to go on. A good woman's reputation opens all doors. When we explained what we were up against to the people interviewed, we found a response that to me was simply amazing. On the telephone, I had no power to bring Mr. and Mrs. Palmer up here from Atlanta, over the telephone, no power at all. They were busy people, they were people of affairs, they had their own business in Atlanta, and here I, some person they had never heard of before, when the F.B.I. had finally located them, on the telephone, asking that they come, "I can't, Mr. Brown. We are busy." "You must come. It will help save a good woman's reputation." These people asked no more. They said, "We will come. We will come on the first train, and we will stay there, if we can save that woman." And

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so we found the camp known as the Beech Grove tourist camp was not even in existence at the time this vile story was told.

I am going to close now and leave you one thing:

“And he that stealeth a man and selleth him or if
 2067 he be found in his hands, he shall surely be trodden down.” And I say to you, Mrs. Elswick and gentlemen of the jury, that the same benificent, merciful God that guarded Mrs. Stoll during those six horrible days at Indianapolis, guided the steps of the Federal Bureau of Investigation and myself to disprove that charge.

Thank you.

The Court: Members of the jury, you have had a long day today, in hearing the arguments of counsel. We would like, of course, to close this case up tonight if we can, one way or the other. However, at this hour, I believe it would be inadvisable for me to attempt to give you the instructions and to start you upon your deliberations as they will be somewhat lengthy, not nearly as lengthy, though, as the arguments you have listened to. I think it would probably be advisable, if it meets with your approval, that we adopt the procedure we have had on other occasions, to adjourn at the present time, let you go home, clean up and refresh yourselves and have your supper, return here at 7:30, and let you have the evening for the instructions and for your deliberations under conditions that will enable you to give due consideration to everything that has been brought to your attention and will be brought to your attention.

Accordingly, I will repeat my admonition to you,
 2068 not to discuss the matter among yourselves or with anyone, or permit anybody to talk about it to you or in your presence, also the added instruction this last time, not to eat too much nor to indulge too much so as to take any chance of getting sick or ill.

We will adjourn then, until 7:30 p. m.

An adjournment was taken to 7:30 p. m. of the same day, at which time court convened and the following proceedings were had:

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INSTRUCTIONS

By the Court: Members of the jury, you have been engaged in the trial of this case for the last two weeks, and you have given your time exclusively to that duty, for which I want to thank you before we say anything else. As I told you when you were first called here, it is the duty of every citizen to perform certain of the obligations that he would be called upon to perform by the community in which he lives, and while I realized it would be a hardship and be quite inconvenient for some of you to stay here in the city, to be confined or sequestered, as we call it, during the course of this trial, yet I am very pleased that all of you have been able to do so and cooperated so nicely with

the court and with the attorneys, and have listened **2069** so attentively to the evidence and to the argument as it has gone on in this case. I am sorry that we had to lose one of the members that we started with, and I am glad that no ill effects have occurred to any of the others of you, although I must confess that we did have one or two small scares a few days ago. However, you all seem to be in good shape at the present time. You have had a short rest from the afternoon recess, and I know that you can give your attention to me now as I give you the law which is applicable in this case.

I will start out by saying, as you probably all know, that the jury in our jurisprudence is the trier of the facts. In cases where we have a jury trial, we have disputed facts, and it is the province of the jury to decide what the true facts are, what the real facts are, from all the evidence which they have heard, and then to apply the law as the court gives it to you, to those facts as you have decided them, and with that double purpose, deciding the facts and applying the law, you reach your verdict in the particular case which you are considering.

Now in addition to the evidence which you have heard in this case, there have at times been certain exchanges between counsel, certain remarks which they have made, certain remarks which the court may have made, and also we have had the argument by two counsel for

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2070 the Government and one counsel for the defendant.

You will hear certain remarks by the court in these closing instructions. I might tell you to start with that the argument of counsel, any comments that the court might make, are for the purpose of assisting you in reaching a just verdict for the purpose of calling to your attention pertinent facts which they think should be called to your attention. Such argument is not evidence in the case. It is merely to present the facts which the evidence have brought out to your attention, and you will not consider the argument as evidence, but as an aid to help you in reaching a just and proper decision in the case.

I might say also, as it has also been brought to your attention, the Government in this case is represented by the District Attorney of this District, the United States District Attorney, and by his assistant. That fact, however, does not give any added weight to their argument, other than what would be to the argument itself, and due to the fact that the defendant in this case filed his affidavit, said that he was unable to employ counsel, the court has employed counsel for him—the court has appointed counsel for him, who has represented him in the trial of this case.

The indictment in this case, which consists of two counts, charges in the second count, which is the only count **2071** with which you are concerned, generally, that on or about the 10th of October, 1934, in Jefferson County, Kentucky, Thomas Henry Robinson, Jr. did unlawfully transport in interstate commerce from Louisville, Kentucky, to Indianapolis, Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnapped, abducted and carried away from her home by the said Robinson, Jr. and held the said Mrs. Alice Stoll for ransom or reward, and the said Robinson, Jr. then and there, while Mrs. Alice Stoll was in his custody, did beat, injure and harm her and did not liberate her unharmed.

The defendant has entered a plea of "not guilty" to that count of the indictment, and it is upon that count of the indictment and the plea of not guilty that you are trying in this case.

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It is necessary first for me to give to you the federal statute which controls this case and which is applicable to the case. It provides, leaving out some immaterial portions that:

“Whoever shall knowingly transport or cause to be transported in interstate commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except in the case of a minor, 2072 by a parent thereof, shall, upon conviction, be punished, first, by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person had been liberated unharmed, or, second, if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine.”

You will notice, therefore, that the offense charges in this case under this section of the Federal Statutes is not the offense of kidnaping. Kidnaping is a state offense. The offense here is for transporting in interstate commerce a person who had been kidnaped and held for ransom; in other words, there is more involved in this case than merely the kidnaping. It is the transportation of a kidnaped person in interstate commerce.

Now the phrase, “in interstate commerce,” means from a point in one state to a point in another state, and as applied to the facts of this case and as charged in this case, it is charged that the transportation occurred from Louisville, Kentucky, to Indianapolis, Indiana, and if such a transportation occurred that is interstate commerce.

So we see that the charge then, or the elements 2073 then, are that there must be the transportation from a point in one state to a point in another state of a person who has been kidnaped and held for ransom or reward.

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The statute requires, in order for the offense to be committed, that the person transported in interstate commerce shall have been unlawfully seized, kidnaped or carried away by any means whatsoever and held for ransom or reward. This means that the seizure, kidnaping or carrying away referred to must have taken place prior to the transportation from one state to another of the person so seized, kidnaped or carried away. If the person so transported accompanies the alleged kidnaper voluntarily from one state to the other, the offense charged has not been committed, even though the defendant unlawfully seizes, confines, or kidnaps the transported person after the transportation has been completed. The phrase "kidnaped," as used in the statute, is one of common law meaning. At common law kidnaping is "the forcible abduction and carrying away of a man, woman or child from their own country and sending them to another." It involves the element of seizing the victim by force or fraud and against her will, and unless such element exists the act of kidnaping has not been committed. The statute also requires, as pointed out above, that in addition to the victim being seized, kidnaped, or carried away it is necessary that she be held for ransom

2074 or reward prior to the act of transportation. The phrase "ransom or reward" is used in its ordinary sense as meaning the money, price or consideration paid or demanded for the release of a captured person. The statute also provides that it does not apply, and criminal liability does not exist if the transportation in question is of a minor by a parent thereof. Accordingly, there must be evidence of substantial value in this case that Alice Speed Stoll was held for ransom or reward and while so held was transported, taken or carried away in interstate commerce, and that she was not a child of Thomas Henry Robinson, Jr.

On that last point, I believe the evidence showed that Alice Stoll was thirty-seven years of age at the time of this trial, and Thomas Robinson, Jr. was thirty-six years of age at the time of this trial, and that Mrs. Alice Stoll was the daughter of William Speed.

The defendant is entitled to have the benefit of all the

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principles of law and the rules of practice and evidence which are designed to safeguard life and liberty. Among those principles and rules we have the following:

In order for you to return a verdict of guilty in this case, it is necessary that the Government prove by competent evidence beyond a reasonable doubt all of the facts

which constitute the commission of the alleged offense. The defendant is entitled to the presumption,

at the start of the case, which always exists in every criminal case, that he is innocent of the offense charged and that presumption continues throughout the case until and unless it is overcome beyond a reasonable doubt by the evidence presented to you. The return of the indictment in this case against the defendant is merely the charge on the part of the Government that the defendant committed the offense therein set out. It is not any evidence whatsoever of his guilt, and you should not consider it as such. His plea of not guilty to that charge denies the existence of each of the necessary elements going to make up the offense therein charged. The burden of proof is therefore upon the Government to prove by competent evidence beyond reasonable doubt that all and each of such elements exist. A failure on the part of the Government to so prove any one of the necessary facts in the commission of the alleged offense would require that you return a verdict of not guilty. By a reasonable doubt is not meant a possible doubt, but such a doubt arising from the evidence, or from the lack of evidence, that leaves the minds of the jury in such a state that they cannot say, after having reviewed all the evidence, that they have an abiding conviction, to a moral certainty, of the guilt of the accused. It is a doubt

founded in reason, one that appeals to reason. It is not an imaginary doubt, nor is it a fanciful, captious or speculative doubt; nor does it mean a doubt born of reluctance on the part of the jury to perform an unpleasant duty, or a doubt arising out of sympathy for a defendant, or out of anything other than a fair and impartial consideration of the evidence presented. If, after having given such consideration to the evidence in this case there remains such a reasonable doubt in your minds as to the

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guilt of this defendant, then your verdict should be not guilty; but if, after such a consideration of all the evidence presented in this case, you have no such doubt as to the defendant's guilt then your verdict will be one of guilty. If the facts as proven are as consistent with the innocence as they are of guilt, or if the proven facts are consistent with innocence, your verdict should be not guilty. The jury is the sole judge of the facts in this case. While the federal law permits the court to make fair comment upon the evidence in the case, and to review the evidence in the case, you are instructed that such comment either during the trial or during these instructions, and such review of the evidence is in no sense binding on you in your deliberations as to the truth of the questions of fact involved in this case. In any review or analysis of the evidence which I may make it is for the sole purpose of attempting to aid you in your deliberations and in pointing out
2077 to you particular bits of evidence which I think you should not overlook, and any statements of fact made by me in so doing, and any opinion or comment which I may make upon the evidence, can be entirely disregarded by you if in your opinion it is different from what you remember the evidence to be or from your view of what its effect is. Always keep in mind that you, the jury, are the sole and exclusive judges of the facts involved in this case.

In addition to being the sole judges of the facts, you are likewise the sole judges of the credibility of each witness who has testified. It is for you to determine the weight or the credit to be attached to the testimony of any witness. You do not have to accept the testimony of any witness at its face value, or at all, if, in your opinion, you think it is partially or entirely untrue and should be so discounted or disbelieved. In passing upon the credibility of each witness you will take into consideration the manner and demeanor of the witness upon the witness-stand, his interest or lack of interest in the result of the case, any prejudice or bias in favor of one side or the other that might exist, whether or not he has a purpose or interest to serve which might color his testimony; the opportunity of the witness for knowing the facts about which he has

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testified; the probability or improbability of his testimony; the consistence or inconsistency of his statements; whether or not the particular witness under
2078 consideration has at some other time made another statement or done an act contradictory either in whole or in part of the testimony of such witness given in this case. If you believe that any witness intentionally made a false statement in such witness' testimony to you, or that any part of such testimony is false, you may, in your judgment, disregard such testimony and disregard or properly discount all of the testimony of such witness. From all the circumstances detailed by the witnesses, determine where the truth in this case lies.

In this case the Government spent considerable time and introduced many witnesses in proving to you a number of the facts in this case. I do not believe that it is necessary to review in detail much of that evidence because when the defendant Robinson took the witness-stand many of the facts previously proven by the Government's witnesses or many of the facts towards which the evidence was directed, was admitted by the defendant Robinson. In fact, so much of the facts in this case have been either admitted by one side or the other, that there are only a few of the issues which are really left for your consideration.

As I pointed out to you, the statute requires that the person be first kidnaped, abducted or carried away
2079 and held for ransom or reward and such person be transported in interstate commerce. The defendant Robinson in his testimony has admitted to the jury that he transported Mrs. Alice Stoll from Louisville, Kentucky, to Indianapolis, Indiana. Accordingly, the question of transportation in interstate commerce is no longer an issue in this case, but the defendant Robinson claims that such transportation was not unlawful and that Alice Stoll went with him voluntarily; in other words, it was not the transportation of a kidnaped person, but it was the transportation of someone who went with him voluntarily. As I have explained the law to you, if this transportation was not an unlawful one, or if Alice Stoll went with him willingly, the

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offense alleged in this indictment has not been committed and your verdict would be not guilty. On the other hand, the Government claims and its evidence has been directed to the contention that the transportation followed a forcible seizure and abduction, and that Alice Stoll did not go with the defendant voluntarily. This presents a direct issue of fact for your decision on which, as I have said, you are the sole judge. That is one of the real questions in the case which you have to decide, whether or not this transportation of Alice Stoll was against her consent after she had been kidnaped or seized or whether it was a voluntary accompaniment by her with the defendant.

2080 Two witnesses, Mrs. Alice Stoll herself, and the maid Ann Woolet, testified about the forced abduction in the Stoll home from the guest room on the second floor, at the point of a pistol and following two blows on the head of Mrs. Stoll with an iron pipe by the defendant Robinson. Several witnesses testified about her physical condition upon her return, including a Louisville doctor, Dr. Frazier, who testified about a cut on her head, a bump on her head, sores, abrasions on her lips and marks on her wrists. A number of witnesses, Alice Stoll, the maid, Berry Stoll, William Marshall Bullitt, Elizabeth McHenry, and possibly others, have testified as to the blood stains on the bed in the guest room from which Alice Stoll left. Others, including federal and state enforcement officers, testified about the telephone wires in the Berry Stoll home being cut, the finding of the iron pipe in the guest room and the finding of the ransom note which the defendant has admitted that he wrote.

Opposed to this testimony on the part of the Government is Robinson's own testimony that she was not taken against her will, but went voluntarily because of their friendship and because of the scheme between them to collect and divide equally the ransom money of \$50,000.00. Also the testimony of Alvin Kirtley, who also went under the name of Harry Colvin, a taxicab driver, that he

2081 saw a woman whom he later recognized as Alice Stoll from her picture in the newspaper some several years later, sitting in the front seat, in a car which was being

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driven by the defendant, indicating, of course, by that, that she was going voluntarily. Kirtley's credibility as a witness was attacked by the Government. It was pointed out that he used an alias, and on a number of occasions had used first one name and then the other in applying for operator's licenses, also that he had been previously convicted of a felony, and as I believe I told you, but which is proper to be repeated at this time, the law says that when a witness—it is shown about a witness that he has been previously convicted of a felony, that is something for the jury to consider in determining what credibility you will give to that witness' testimony and whether or not you believe it worthy of belief in the case which you are hearing. It was also attacked on the ground that Kirtley did not report the matter to the police or any enforcement officers, although the case was one of wide notoriety.

Robinson's own testimony in support of his contention of visits to the Beech Grove tourist camp on the Dixie Highway in June and July of 1931, is given in support of his contention in this case. After that I believe the evidence was to the effect that he went to Chicago about the 1st of August, 1931, and then to Nashville. The

2082 Government offered in evidence in rebuttal, that the Beech Grove tourist camp on the Dixie Highway, they did not start to build the cabins on that until the last part of August, 1931, and the first occupants in any of those cabins was on October 12th, 1931, which was after Robinson had gone from Louisville and to Chicago. This testimony was through the witnesses, Mr. and Mrs. E. S. Palmer, I believe, of Atlanta, Georgia, and by the West Point Brick Company which supplied some of the brick or all of the brick for the building of those cabins. Robinson's testimony to the contrary was that he did not necessarily say that he lived in a tourist cabin, but that there were rooms—two rooms available over a garage which was in the yard at all times.

Outside of this conflicting testimony which I have reviewed to you, there is a written document in evidence which I think should be considered by you and which was passed over somewhat lightly by the various attorneys in

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this case, at least in their arguments, and I refer to the typewritten letter which was written and sent to the intermediary which Robinson admitted writing, and which starts with the sentence, "I am the kidnaper of Alice Stoll" and added that she had only a slight cut which was partially healed. I call your attention to the fact that in order for a cut to be partially healed, it must have been inflicted prior

thereto, and to the statement in this letter that the
2083 writer said, "I am the kidnaper of Alice Stoll."

On this disputed question of fact, the evidence in my opinion is overwhelmingly in favor of the Government's contention that the transportation from Louisville, Kentucky, to Indianapolis, Indiana, was unlawful and against the will of Alice Stoll. However, as I have said previously, any such opinion on my part is not in any way binding upon you, and you are the sole and exclusive judge of the facts in this case, including this particular issue.

The other defense relied upon by the defendant Robinson in this case is, generally speaking, the defense of insanity. Just what constitutes insanity so as to excuse a person for acts which would otherwise be criminal will be given to you in more detail shortly, but first let me discuss with you generally the nature of such a defense and what part it plays in a criminal trial.

One who violates the provisions of a criminal statute is not guilty of the offense denounced by that statute unless at the time of the doing of the act he had sufficient mind to comprehend the criminality or the right or wrong of such an act. In order to constitute a crime, a person must have intelligence and capacity enough to have a criminal intent and purpose, and if his reason and mental powers are either so deficient that he has no will, no conscience, or controlling mental power, or if so through the
2084 overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent and is not punishable for criminal acts.

Upon whom then, must rest the burden of proving that the accused belongs to a class capable of committing crime. On principle it must rest upon those who affirm that he

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has committed the crime for which he is indicted. That burden is not fully discharged until guilt is made to appear from all the evidence in the case. The law presumes in the first instance that everyone charged with crime is sane, and thus supplies in the first instance the required proof of capacity to commit crime. It authorizes the jury to assume at the outset that the accused is criminally responsible for his acts, but that is not a conclusive presumption which the law forbids to be overthrown or impaired by opposing proof. It is a disputable, or, as it is often designated, a rebuttable presumption resulting from the connection ordinarily existing between certain facts, a presumption that is liable to be overcome or to be so far impaired in a particular case that it cannot be safely or properly made the basis of action in that case. The initial presumption of sanity in this case was rebutted and overthrown by the evidence of the defendant, showing that the defendant was on June 27th, 1929, adjudicated insane by

the Circuit Court of Davidson County, Tennessee, 2085 and on May 7th, 1930, was found to be of unsound mind and his father appointed his guardian by reason thereof by the County Court of Davidson County, Tennessee. This not only overthrew the initial presumption of sanity which I have referred to, but created at that time a presumption of insanity which presumption continues until the contrary is proven by the Government by competent evidence beyond a reasonable doubt. Time alone does not in itself eradicate such presumption of insanity; but it does not necessarily follow that because a person has been adjudicated insane he will continue to be insane or of unsound mind forever thereafter. Such a person may have lucid or rational intervals, or after a lapse of time completely recover his sanity. In fact, in this case, the defendant himself claims to have been restored to a sane mental condition about the year 1940. There has been no judicial finding that the defendant has been restored to sanity, but it is not necessary in order for a person to be criminally responsible for his acts that there be a formal judicial finding by a court that the person has been restored to sanity. Such a recovery may be had with-

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out judicial proceedings, and if, in fact, it has occurred, at or prior to the commission of the alleged offense, the defendant is not excused from criminal responsibility for his acts by reason of such prior insanity. Although the
 2086 defendant claims that he was not restored to sanity until about 1940 and was accordingly insane on October 10th, 1934, the date of the alleged offense herein, the Government claims that any insanity on the part of the defendant had completely disappeared by October 10th, 1934, and at the time of the alleged offense the defendant was sane and criminally responsible for his acts.

This raises a direct issue of fact, ~~another~~ issue of fact, which this jury must decide. Keep in mind that the time to which you must direct your attention as to this issue of sanity is the date of October 10th, 1934, as it is the legal capacity of the defendant to commit a crime on that particular day, not before or afterwards, that is the vital question on this phase of the case. ~~Although~~ you can, of course, consider the acts of the defendant which are in evidence both before and after that day, in so far as they bear upon this issue before you.

Upon whom is the burden of proof on this issue? The burden of proof, as those words are understood in criminal law, is never upon the accused to establish his innocence or to disprove the facts necessary to establish the crime for which he is indicted, or where a defense of insanity is relied upon to prove the fact of insanity beyond a reasonable doubt. The burden of proof is on the prosecution from the beginning to the end of the trial, and ap-
 2087 plies to every element necessary to constitute the crime, including the element of sanity. Where the defense is insanity, the vital question from the time a plea of not guilty is entered until the return of the verdict, is whether upon all the evidence, by whatever side is adduced, guilt is established beyond a reasonable doubt. If the whole evidence does not exclude beyond reasonable doubt the hypothesis of insanity, the accused is entitled to acquittal of the specific offense charged.

With those general principles in mind, I will now point out to you more definitely just what constitutes insanity,

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which will relieve a defendant from criminal responsibility. The term insanity as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he has committed, or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it but are beyond his control.

The terms sane and insane, as we have heard them here in this trial, are somewhat general terms. We have had a discussion by experts dealing with psychosis, 2088 dementia praecox, dementia praecox paranoid type, and psychopathic personality, and other mental defects. This discussion has been helpful, but in the decision on this defense, generally known as insanity, we do not rely upon such general expressions. The real question is, was he on October 10th, 1934, mentally capable of committing a criminal act. In deciding that question you will use the test I have given you just a few minutes ago, and not the general terms of sane or insane. Let me refer back to that test or definition, what you want to determine is whether or not this defendant at that time had such a perverted and deranged condition of the mental and moral faculties as to render him incapable of distinguishing between right and wrong or unconscious at the time of the nature of the act he was committing, or where, though conscious of it, and able to distinguish between right and wrong, and to know that the act was wrong, yet his will, by that I mean the governing power of his mind, had been otherwise than voluntarily so completely destroyed that his actions were not subject to it but were beyond his control.

One of the defendant's expert witnesses testified, I believe, that in his opinion Robinson knew right from wrong. I believe all seven of the Government's expert witnesses gave the same opinion. And as I recall, the de-

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fense counsel in his closing argument conceded that Robinson at the time of the alleged offense here knew right
2089 from wrong, but the contention is made on behalf of the defendant that the evidence shows that the governing power of Robinson's mind had been so completely destroyed that his actions were not subject to it but were beyond his control. The three expert witnesses for the defendant gave such an opinion, although Dr. Crice's testimony was contradictory and somewhat confused, at least to the court, on this particular point. Those three witnesses for the defendant were, as you remember, Drs. H. B. Brackin, Thomas J. Crice and Leon L. Solomon.

For the Government—Dr. E. W. Cocke of Memphis, Dr. Dennis E. Singleton, the physician at the Leavenworth Penitentiary and Dr. R. M. Richey, physician at Alcatraz Penitentiary, testified that Robinson had no mental illness at the time that each one of those physicians examined him, Dr. Cocke, I believe, on August 24th, 1930, Dr. Singleton on June 19th, 1936, and Dr. Richey on July, 1939, three examinations covering a period from 1930 to 1939 which straddle, you might say, the particular date involved in this case of October 10th, 1934. All three of those physicians testified Robinson had no mental illness at those respective times.

The evidence showed on Robinson's behalf that he was adjudicated insane by the Criminal Court of Davidson County, Tennessee, and admitted to the Central
2090 State Hospital on or about June 27th, 1929, and that after the criminal charges were nolle prossed he was released about May 25th, 1930, transferred to the Western State Hospital on that date, at which time he was released on August 24th, 1930, the doctor in that particular case testifying that in his opinion he was not insane at that time and they had no legal right to hold him, although he thought he should be held there as he was a menace to society.

For the Government, the four expert medical witnesses, Dr. Edward E. Landis, Dr. Isham Kimbell, Dr. Spafford Ackerly and Dr. W. E. Gardner, testified that Robinson knew right from wrong as of October 10th, 1934, and on

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that day that his will, the governing power of his mind, was not so destroyed as to make his actions beyond his control.

There is a conflict of opinion then between medical experts, and it is necessary for you in considering the evidence in this case to determine the credibility that you will give to the different medical experts who have testified in this case, determining in your own opinion which ones, or which one or more of them, you feel are entitled to the most belief in this case, taking into consideration their training, their experience and the reasons which they may give you for the opinions which they have given you in this case.

I believe it is proper at this point to touch on one thing which occurred in the evidence last night. I
2091 believe both Dr. Solomon and Dr. Crice made some mention, probably it was the night before last, that they were members of the Jefferson County Lunacy Commission. At that time the court questioned them quite at length as to just what they meant because the court was not familiar with any such lunacy commission. In the interval between that time and this time, I have looked at the Kentucky Statutes and I have been unable to find any such Kentucky Lunacy Commission as such witnesses referred to, but if any such commission exists I will, of course, be glad to have it called to my attention and to so advise you. The Kentucky law in that case seems to be that the court does appoint medical men, doctors, to examine a person who is charged with being insane, but the appointment appears to be a specific appointment for each individual case. It may be that there is some practice to appoint the same man successively over a period of time, but I do not find in the Kentucky Statutes any such board known as the Jefferson County Lunacy Commission or any state lunacy commission. However, the evidence on the question of sanity or insanity is not limited to the opinion of medical men or these so-called expert witnesses. Such testimony is valuable, should be considered by you, as they are men who are trained in mental diseases and usually know whereof they speak. But in addition to such tes-

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2092 timony, you should consider all of the acts of this defendant, both within a reasonable time before and a reasonable time after the date of the alleged offense, which, as I repeat, is October 10th, 1934, in this particular case, which have a bearing on that issue. I say those acts should be considered by you in passing upon this question. Among those acts I feel I should call to your attention some of the following facts which I believe were testified to by witnesses for the Government, maybe in some parts by one or more witnesses for the defendant.

First, the good grades which were received by this defendant in attending law school at Vanderbilt University, also the good grades received by this defendant in the examination for a position with the Tennessee Valley Authority sometime about December, 1933, also his satisfactory work as an employee of the Du Pont Company at the Old Hickory plant from October 31st, 1933, through April 23rd, 1934, also his contacts and actions in connection with his fellow men, such as the dentist, Dr. Muriel E. Long in Illinois, in July and August of 1934, such as with Ralph Cribari who lived next door to him at Rye, New York, in the summer of 1935, and such contacts as were had with Mrs. Anna Webb, the real estate broker in Los Angeles, California, in January, 1935, also consider his actions in planning and in carrying out the scheme which you have

heard about in the evidence, also his successful actions in evading capture for nineteen months after

2093 October 10th, 1934, and also the armed condition of himself and his home at the time of his capture there in Glendale, California, on May 12th, 1936. These should be weighed against the acts of moroseness, period of depression, fits of temper, rage against his parents and his wife, illusions of grandeur, ideas of reference, thoughts of persecution, the reincarnation of Patrick Henry, in the extent that you may believe such conditions actually existed.

Keep in mind in making this evaluation that the legal test that controls your decision in this case. Such moods as being morose, or being depressed, such characteristics as temper and rage may be at sometimes in all of us and do not necessarily constitute an unbalanced or insane

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mind. The test is, as I have said heretofore and briefly state it again, did Robinson know on October 10th, 1934, right from wrong, and did he realize the consequences of his own deliberate acts, and was his will power enough to control them. That is the defense, second defense, as I have pointed out, which this defendant has made to this charge, and that presents that issue of fact as to the capacity, the mental capacity, of this defendant to commit the act with which he is charged.

Keep in mind that if either one of the two defenses is sustained by the evidence in this case, either that
2094 there was no kidnaping or that even if there was a kidnaping that he was not sane as the term is generally used at the time of the kidnaping, the verdict, of course, would be not guilty. It is not necessary that both defenses be sustained, either one would be sufficient.

Your first duty, members of the jury, will be to attempt to reach a verdict in this case of either guilty or not guilty. If your verdict is not guilty, it should read, "We, the jury, find the defendant not guilty," in which case your deliberations will cease and you will return such verdict into court. If, on the other hand, it should be one of guilty, then it will be necessary for you to give further consideration as to whether or not the jury shall recommend punishment by death. I direct your attention again to the provisions of the federal statute control this phase of the case, which reads, "shall upon conviction be punished, first, by death, if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if prior to its imposition the kidnaped person has been liberated unharmed."

In the federal courts, the sentence following a verdict of guilty is fixed by the court within the limits provided by the applicable statute and not by the jury. The applicable statute in the present case still vests that duty in the court, but it also provides that the jury may,
2095 upon finding a verdict of guilty, recommend punishment by death under certain conditions as herein-after referred. If no such recommendation is made by the jury, the court cannot impose a sentence of death. If such

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a recommendation is made by the jury, it is not binding upon the court, but will, of course, be given careful and serious consideration by the court in imposing sentence. Keep in mind, therefore, that if your verdict should be one of guilty, that you have the further duty of deciding whether or not you shall recommend to the court punishment by death. Whether or not such a recommendation should be made calls for an exercise by the jury of discretion and an evaluation of mitigating circumstances. It would be your duty to determine whether the defendant, in view of all the circumstances surrounding the commission of the crime, merited the death penalty. In exercising this privilege whether or not such a recommendation should be made, you are not bound by rules of law, but will make your own appraisal of the character of the conduct of the defendant as evidenced by his acts which were related to the commission of the crime with which he is charged.

Also keep in mind that you cannot recommend punishment by death if the kidnaped person has been heretofore liberated unharmed. The kidnaped person in this case was

Mrs. Alice Speed Stoll. She has been heretofore
2096 liberated by the kidnaper and returned to her home.

But this still leaves for your decision whether or not she was liberated unharmed. In considering and deciding this issue of fact, I instruct you that the statute, reasonably interpreted in the light of its purpose, refers to the condition of the kidnaped person at the time of her release. It bars the death penalty and also any recommendation by the jury to that effect if the kidnaper has released the kidnaped person unharmed, even though the kidnaped person may have received injuries during captivity from which she had recovered at the time she was liberated.

Accordingly, if your verdict is one of guilty, and upon consideration of the question of whether or not any recommendation of punishment by death shall be made to the court, it is necessary for you to first decide whether or not Mrs. Alice Stoll was liberated by the kidnaper unharmed. The word unharmed will be given by you its usual and ordinary meaning attributed to it in the ordinary

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use of the English language. It means not harmed by the kidnaper during the commission of the offense or while in the custody of the kidnaper prior to liberation by him. The usual and ordinary meaning of the word harmed is hurt, or injured, or damaged. If you find that Mrs. Alice Stoll was liberated unharmed by the kidnaper, you cannot recommend punishment by death even though your verdict is one of guilty. If on
2097 the contrary you find that Mrs. Alice Stoll was not liberated by the kidnaper unharmed, you then give further consideration to whether or not in your judgment and discretion you decide to recommend punishment by death in accordance with the instructions hereinbefore given to you.

If your verdict is one of guilty and you decide to recommend punishment by death, your verdict should read, "We, the jury, find the defendant guilty and recommend punishment by death." If your verdict is one of guilty and you decide to make no recommendation, your verdict will read, "We, the jury, find the defendant guilty," and no more. Any verdict that you may reach in this case, one of not guilty, one of guilty without recommendation, or one of guilty with recommendation, must be a unanimous verdict, that is, must be agreed upon by all twelve of your number. It will be signed by one of your number whom you designate as your foreman.

Any further requests by counsel for either side?

Mr. Brown: Nothing further, Your Honor.

Mr. Hogan: Nothing further, Your Honor.

The Court: I believe the Clerk has prepared forms of verdict if you would like them given to the jury. Otherwise, we can let the jury write out their own verdict.

Mr. Brown: It is certainly agreeable with me to give the jury the form of verdict.

2098 The Court: Let Mr. Hogan see them—three separate forms.

Members of the Jury, the three possible verdicts have been prepared by the Clerk, and by agreement of counsel they can be left with you. You will sign the one that you agree upon, that is, your foreman agreed upon by you.

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will sign such verdict as your foreman.

You may retire to your room upstairs to begin your deliberations. We will permit you to proceed with them for a reasonable length of time, and if it gets too close to the retiring hour and you feel that it is necessary to retire without further deliberations, you can notify the Marshal and he will let me know, and we may talk it over and see what the situation is, or we can be excused as the case may warrant.

Deputy Marshal Cassady was thereupon sworn by the Court, as follows:

You, Deputy Marshal, United States District Court for the Western District of Kentucky, do solemnly swear that you will protect the jury and keep the jury safe in its deliberations upon the verdict in this case.

The Court: We will now recess.

2099 After deliberating, the jury returned to the court room and the following proceedings were had:

The Court: Do you waive the call of the jury, gentlemen?

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Yes, Your Honor.

The Court: Members of the jury, have you been able to reach a verdict?

Foreman Mattingly: Yes, sir.

The Court: Let the foreman read the verdict, please.

Foreman Mattingly: "We the jury find the defendant, Thomas Henry Robinson, Jr., guilty and recommend the death sentence."

The Court: Whom is it signed by?

Foreman Mattingly: Signed by William Mattingly.

The Court: So say you, all twelve of you?

Jurors: Yes, sir.

The Court: You wish the jury polled?

Mr. Hogan: I think they ought to be polled, Your Honor.

The Court: Each of you stand up. Is the verdict as read by your foreman your verdict?

(The above question was propounded to each juror who responded in the affirmative.)

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The Court: Let the Clerk enter the verdict and
2100 make the docket entry.

The Court: Have you the verdict? Let me see it, please?

(Verdict handed the Court.)

The Court: Any other thing to be suggested by counsel?

Mr. Brown: You want to pass sentence tonight?

The Court: No.

All right, members of the jury, I want to thank you for a long and arduous task which you have performed. As I said in my instructions, it has been a long two weeks, you have listened attentively and cooperated with everybody and you have performed a civic duty that members of the community are called upon to perform at times. Some of you, I know, are on the panel that had been attending here regularly. We do have other cases that are coming up Monday morning, but I am going to excuse all of you that were on the regular panel. It will not be necessary for you to return any more at this term of court. I think you have served your term of service. You can be excused then. Call at the Clerk's office first, and then at the Marshal's office, if you will please, and you can be excused from further duty this term of court.

The defendant is in custody of the Marshal. .

Let the court be adjourned.

Mr. Hogan: Is the court going to accept the
2101 recommendation of the jury?

The Court: That will be discussed, I presume, if you gentlemen would like to take it up then, Monday morning at 10:00 o'clock.

Mr. Hogan: All right.

Mr. Brown: That's agreeable, Your Honor.

2102 Court convened on Monday morning December 13, 1943, at 10 a. m., pursuant to adjournment, and the following proceedings were had:

The Court: The case of the United States vs. Thomas Henry Robinson, Jr., in which you are a defendant and which was tried in this court for the last two weeks, the jury on Saturday night returned a verdict in which they

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found you guilty and in the same verdict recommended punishment at death. You were present at the time the verdict was returned.

Mr. District Attorney, have you any recommendation to make in this matter?

Mr. Brown: Yes, Your Honor. I ask that the judgment of this court, in accordance with the verdict of the jury, be that this defendant Robinson be taken hence at some date to be selected by this Court, and by the Marshal of this court that he be electrocuted and put to death.

The Court: Mr. Hogan, have you any statement to make for your client to the Court?

Mr. Hogan: Yes, I have, Your Honor. First, I promised the Court some written motions for a directed acquittal, and I have those.

The Court: They may be filed as of today when they were made.

Mr. Hogan: And then I have, in addition to 2103 that, a motion in arrest of judgment.

By the Court: What does it set up?

Mr. Hogan: That the indictment upon which the defendant was tried and convicted does not state facts sufficient to constitute a crime against the United States.

The indictment does not contain such a statement of facts and circumstances as to inform the accused of the specific acts with which he is charged.

The indictment upon which this defendant was tried alleges in the language of the statutes that this defendant knowingly transported in interstate commerce a person who had been unlawfully kidnapped and held for ransom, to-wit: Mrs. Alice Stoll and that this defendant did not liberate her unharmed; that such bare naked allegations do not meet the requirements that an indictment must fully, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; nor does the indictment meet the further requirement that a crime must be charged with precision and certainty, and every ingredient of which it is composed must be accurately and clearly alleged.

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The indictment upon which this defendant was tried is not free from ambiguity, and leaves doubt in the mind of this accused of the exact offense intended to be charged and does not apprise him what he is called upon to
2104 meet.

The indictment upon which this defendant was tried, although alleging that Mrs. Alice Stoll was not released unharmed, nevertheless does not allege or charge any specific physical or bodily injuries or harm, and this defendant did not know, and could not know, what to expect or what defense he would be called upon to meet such bare, naked, unexplained allegations, because such allegations could have meant Mrs. Stoll was injured or harmed in any number of ways or to any number of extents or degrees, and such allegation is and was susceptible to any number of meanings and interpretations and is not clear or specific.

The offense charged and alleged in said indictment is duplicitious.

The indictment upon which this defendant was tried was and is wholly lacking in accurate and clear allegations and does not and did not warrant or permit the introduction of any evidence to sustain the allegation that Mrs. Alice Stoll was not liberated unharmed. Of course, Your Honor—

The Court (Interrupting): That is the same question that we discussed during the trial of the case when you made your motion that such evidence be excluded.

Mr. Hogan: Yes, we discussed it and, if Your Honor please, I would like to discuss it further because I have any number of cases that bear me out from the
2105 state courts and federal decisions, and supreme court cases.

The Court: Well I am, of course, familiar with the rule of law that you contend with, and such rule is a rather established one. It seems to me that the point is whether or not that rule is applicable to this case.

Mr. Hogan: That is right.

The Court (Continuing): And the authorities which you have wouldn't do anything but tell me what I already

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know about the rule of law. After all, it is a question of judgment, I believe, whether or not that rule is applicable to this case. And in cases of this kind we have no decision of any other court that I know of, and I believe counsel agrees that this is probably the first instance of such a point being made in a case of this kind.

Mr. Hogan: That is all the more reason why that I think and insist, if Your Honor please, that we should go into it further before you impose sentence upon this defendant, because after all this is a matter of this man's life and I don't think that we should be in any hurry to take a life when we might make a mistake.

The Court: Well of course in a case of this kind, any ruling or any judgment that the Court might give is subject to review by the Circuit Court of Appeals of the Sixth Circuit, at Cincinnati, and any error that I might make, if such an error is made, is not irrevocable. There

2106 has been no hurry about it, and I have given the matter very careful consideration; I did at the time you made the point some eight or ten days ago, and since then I have thought it over in my own mind some more, and I believe so far as argument is concerned that I have about all that could be of any benefit to me. You urged those points on me before and I considered them. It just seems to me that, while your point of law is a good principle of law, it is not applicable to this particular case; and that the indictment sufficiently advises and charges what is necessary to be charged in order to justify such a recommendation by the jury.

Of course you may take an exception to the ruling and in the appeal which you will no doubt take that exception will be reviewed by the Circuit Court of Appeals and if my ruling is wrong, then of course it can be set aside.

Mr. Hogan: Well I certainly do want to reserve an exception.

The Court: Yes. Then let the motion be overruled with exception to the defendant.

Mr. Hogan: Now the next I have is a motion and grounds for a new trial. I take it that that is in order before the imposition of sentence. If not, I will withhold

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it until after sentence.

The Court: I believe it is. Will you read
2107 your grounds to me?

Mr. Hogan: There are a number of them. Do
you want me to read them?

The Court: I expect so—yes.

Mr. Hogan: The first is because the verdict of the jury
is contrary to the weight of the evidence and contrary to
law.

Because the verdict was and is one of an impassioned and
prejudiced jury.

Because of the false and untrue testimony of witnesses
Allen and Mr. and Mrs. Palmer concerning the existence
or non-existence of the tourist camp facilities at Beach-
wood Inn or Beach Grove Inn.

Because of the Court's refusal to permit witness Mr.
Carlisle to fully rebut the testimony of witnesses Allen
and Mr. and Mrs. Palmer with things concerning such
tourist camp facilities.

Because the Court erred in excluding the testimony of
witness W. K. Powell, to which the defendant at the time
excepted and still excepts, and made an avowal,

Because the Court erred in excluding the testimony
of witnesses Joseph Hayse and Nellie Stoess Hayse to
contradict and impeach the testimony of witness Ann

Woolet, to which the defendant at the time excepted
2108 and still excepts.

Because the Court erred in refusing to admit
a prior statement or statements of Ann Woolet to be read
to contradict and impeach her.

Because the Court erred in allowing Ann Woolet and
Fowler Woolet to invoke the rule by refusing to allow
their previous statements to be read to contradict and
impeach their testimony on the ground that when they
had given such statements the relationship of attorney and
client existed between them and Joseph Hayse.

Because of error in instructions given by the Court
and in refusing to give offered instructions of this de-
fendant.

Because of the error of the Court in commenting upon

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the testimony of Drs. Solomon and Crice and in telling the jury that they were not members of any Lunacy Commission of Jefferson County because no such commission was found to be provided for by the Kentucky Statutes; that such comment tended to and did sway the jury and tended to and did cause them to disregard the testimony of those two physicians and to destroy this defendant's defense of insanity.

Because of the error of the Court in commenting upon the testimony of witness Alvin Kirtley because
 2109 that had a swaying and prejudicial effect upon the jury in its verdict.

Because of the error of the Court in commenting upon and unduly stressing that this defendant had written that he was the kidnapper of Alice Stoll which comment tended to and did completely destroy this defendant's defense that Mrs. Stoll went with him willingly and swayed the jury prejudicially against this defendant.

Because of the error of the Court in commenting upon and unduly and impassionately stressing to the jury the questioned fact as to whether or not Mrs. Stoll had a cut on her head at the time she was released causing the jury to be prejudiced and impassioned against this defendant, and causing the jury to recommend the imposition of the death penalty upon this defendant because without such comment the jury would not have recommended the imposition of the death penalty upon this defendant.

Because of error of the Court in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the government's case.

Because the court erred in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the case for both sides.

Because of the error of the Court in overruling defendant's objections to the introduction of testimony
 2110 upon the condition of Mrs. Stoll at the time of her release and permitting such testimony to be introduced to which the defendant at the time excepted and still excepts, which said testimony erroneously permitted and enabled the jury to recommend the imposition of the

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death penalty and without which they could not have so recommended, all of which highly and greatly prejudiced this defendant and his substantial rights.

Because the Court erred in overruling defendant's motion to strike all of the testimony of witness Knowles, the government's fingerprint expert, and all of the exhibits introduced and supposed to be introduced by him, because the said witness Knowles said the questioned fingerprints which he compared with genuine fingerprints could have been made by no other person than Thomas H. Robinson, a person other than this defendant, to which the defendant excepted at the time and still excepts.

Because the Court erred in refusing the offered testimony of this defendant, to which the defendant excepted and still excepts.

Because the Court erred in permitting the United States to introduce the testimony offered by it to which the defendant excepted and still excepts.

Because the proof failed to show that Mrs. Alice Speed Stoll was held for ransom or reward, or that
2111 any ransom or reward was actually ever delivered to this defendant. The testimony which tends to connect this defendant with the crime charged in the indictment was insufficient to warrant submitting this case to the jury under this indictment.

Because the trial Court erred in pronouncing judgment against this defendant.

Because the Court erred in permitting the jurors to have access to and to read newspaper accounts of the trial of this defendant, which said newspaper accounts were entirely prejudicial to this defendant and impassioned the jurors against this defendant.

Because the Court erred in ruling that this was a capital case and instructed the jury accordingly, and in permitting the said jury to recommend the imposition of the death penalty.

Because of the error of the Court in instructing the jury that they may recommend the death penalty because this was not and is not a capital case, and there was a complete lack of any evidence that at the time of the verdict

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of the jury or at the time of the imposition of the sentence Mrs. Alice Stoll was in a harmed condition because she testified during this trial and neither she nor any other witness said or presumed to say that during this trial or

this defendant, that is, at the time of this trial, she
2112 was in a harmed, disabled, infirm or impaired physical condition from any injuries which may have been inflicted upon her at any time between October 10th and October 16th, 1934, by this defendant, and because the statute in question forbids the imposition of the death penalty or the recommendation of the death penalty by the jury if at the time of imposition of sentence of the defendant (that is today) the alleged victim is shown to be in an otherwise than harmed condition, the point being that Mrs. Stoll today is unharmed and is not in any physical harmed condition. Her doctor did not say that today or at the time she testified she was in a harmed condition; nor did her husband nor did anybody else say that she was permanently hurt back there in 1934 between October 10th and October 16th and as a strict interpretation of that statute it means that at the time of the imposition of the sentence, which is today in this case, Mrs. Stoll is not in a harmed condition and, therefore, it is the contention of the defendant that that being true, the jury was not at liberty to recommend the death penalty and, likewise, the Court would not be in a position to follow out the recommendation of the jury.

Now that is a point—I know that that point has been decided one time before but only once and only by one court.

2113 The Court: And that was adversely to your contention, was it not?

Mr. Hogan: That was adversely to our contention but that was not a death case, and they so held that it was not a death case because in that case the indictment was silent as to whether the victim was liberated harmed or unharmed. Now I refer to the Parker case. But the situation is otherwise here. Now that statute, when you interpret it, the word "imposition" is directly connected up with the condition of the victim upon the day of the

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imposition of the sentence.

And I submit to Your Honor that we should consider that very cautiously, and proceed with all diligence because if you are going to construe the term "unharméd" in its commonplace meaning, as Your Honor has indicated, then I say that you should likewise be consistent and interpret this clause which relates to the time of the imposition of the sentence and as to the condition of the victim.

The Court: Now Mr. Hogan, let's read the statute right on that point so there will be no differences between us:

"Provided the sentence will not be imposed by the court if, prior to its imposition, the kidnapped person has been liberated unharméd."

2114 Now you are contending that that means that she has to be unharméd at the time of the imposition of the sentence. But the wording says "liberated unharméd." Does not the words "liberated unharméd" refer to the time when the kidnapper releases the victim? It is a question of whether she was liberated unharméd or to the contrary.

It seems to me that the plain words of the statute refers to the time as being the time of the liberation.

Mr. Hogan: Well in the Parker case they had an awful time deciding what that time referred to.

The Court: Well they decided it the same way that I am looking at it.

Mr. Hogan: They spoke of it as it should have meant if you walked the victim into court during the time of the trial—that that would be liberation, unharméd. And when you tie that up and interpret it in that manner, I say that that is as fair a construction as the construction that Your Honor evidently has in its mind.

The Court: Now there isn't but one Court that has ever construed that, so far as I am advised, and that is the Parker case which I have read, and I took my instructions to the jury directly from the opinion in the Parker case. I told the jury exactly what the Court said in that case with reference to the construction of this statute, which

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is the only judicial construction which we have in
 2115 the country.

In addition to that, I feel that that construction is consistent, entirely consistent, with the plain and unambiguous meaning of the phrase used, "liberated unharmed."

Mr. Hogan: Well didn't the legislature propose to offer some inducement to the kidnapper that if his victim was not permanently hurt or killed that he—

The Court (Interrupting): Well it doesn't say "killed" now. It says "unharmed."

Mr. Hogan: The Parker case says "killed."

The Court: Well I know but this statute did not say "killed."

Mr. Hogan: They said in the Parker case that the legislature must have preferred a live—

The Court (Interrupting): The courts said that was the purpose behind the statute to give some incentive to the kidnapper to return a person unharmed, so that the death sentence could not be imposed but certainly the statute can't be construed that if the victim does not die the death sentence should not be imposed.

Mr. Hogan: They did not impose the death penalty in the Parker case.

The Court: I have now forgotten the facts about that point of the case but I believe the courts said
 2116 the indictment didn't charge a death sentence, did it?

Mr. Hogan: It seems that it said that because one of them got six years and one got two.

The Court: Well the Court said that the indictment was so drawn that no death sentence was charged in it and therefore the death sentence could not be imposed.

Mr. Hogan: I have the record in that Parker case, and they certainly tortured their victim.

The Court: Well wasn't it a question of pleading in that case?

Mr. Hogan: Yes, there was a question of—

The Court (Interrupting): Specifically upon the fact that the indictment didn't justify it.

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Mr. Hogan: Yes, but when it came to sentencing them, they gave one of them six years and one of them three years, and one of them—

The Court (Interrupting): Well as a matter of law they couldn't give them a death penalty because the indictment wasn't drawn that way.

Mr. Hogan: Well, I mean, though, if Your Honor please, that they could have given them a life sentence; and if they only gave them one six years and one three; and I believe that victim there died shortly after that because they so brutally tortured that fellow—they
2117 burned his feet and they just did everything to him.

Now if we are following the Parker case in its construction, I would like to submit that the Parker case ought to be considered when the sentence in this case is imposed.

The Court: Now, do those complete your grounds or do you have any more?

Mr. Hogan: No; I have some more.

Because the Court erroneously permitted evidence of prior crimes and indictments to be introduced against this defendant, to which this defendant at the time excepted and still excepts.

Because the Court erroneously permitted evidence of lay witnesses to establish the fact that this defendant knew right from wrong to which he objected and excepted, and still excepts.

The Court: Well, your own doctor said that, didn't he?

Mr. Hogan: No. I refer you—

The Court (Interrupting): I know some lay witnesses said that but one of the defendant's own doctors said it, too, didn't he? Even if it was erroneously admitted and your own testimony shows the fact that it was so, then there isn't any prejudice is there?

Mr. Hogan: Well he was speaking expertly, though.

But the Court permitted a dentist from Illinois and
2118 some other lay witness.

The Court: But you put your doctor on. I didn't put him on. And you asked him to testify as of October 10, 1934, whether he was speaking expertly or whether he

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was speaking from an examination of the defendant—that was evidence, your evidence, on that point. And, as I understand it, you conceded in your closing argument that the defendant did know right from wrong.

Mr. Hogan: Dr. Brackin said that in his opinion he knew right from wrong, but that he could not control his will.

The Court: Well, that's all they asked those lay witnesses, whether he knew right from wrong, was it not? You did not ask them anything about the control of his will.

Mr. Hogan: But the point is that I do not think lay witnesses know—could be able to say whether a person knows right from wrong.

The next one is because the Court erroneously permitted a letter to be read which this defendant had written while illegally being held in Leavenworth Penitentiary, which was written prior to this defendant's arraignment, to which this defendant objected and excepted, and still excepts.

2119 The Court: Well now that was put in evidence purely for the purpose of having a genuine specimen of his handwriting, wasn't it?

Mr. Hogan: It was put in evidence to show what it showed.

The Court: No. Are you talking about the one about the attached property?

Mr. Hogan: No, sir, I am talking about the one where he said, "I would like to see Jean Breese again and I feel like I am qualified to write a book on how to get a job." It was a three-full-page letter which I submit was in direct violation of the rule written by Chief Justice Frankfurter in a Supreme Court opinion in which he says, "No statements are admissible against one until they are legally arraigned."

The Court: The defendant was arraigned, and there was not any question about it, in May 1936, was he not?

Mr. Hogan: It was a nullity.

The Court: No. His plea was a nullity but he was arraigned, wasn't he?

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Mr. Hogan: Your Honor I don't think so because he was arraigned here before Your Honor. They do not require two arraignments.

The Court: Well they set aside his plea and let him plead over again.

2120 Mr. Hogan: Well I thought we had proceeded throughout this trial on the premise that he had not been arraigned.

The Court: The assumption I thought was that his plea of guilty was not a valid plea.

Mr. Hogan: That was made, of course.

The Court: I don't know that there was an assumption that he was not given an opportunity to plead.

Mr. Hogan: I may call Your Honor's attention to the fact that you would not allow Commander Dewey, as one, testify because of the fact that Your Honor considered that he had not been arraigned.

The Court: That was out of an abundance of caution, as you remember. The District Attorney wanted him to testify and I said I did not think there was much in your point but I said out of an abundance of caution I would not allow him to testify, and I thought it would be well not to have Mr. Dewey testify.

Mr. Hogan: And another thing they had the record from Leavenworth, the medical history, which the District Attorney likewise attempted to have read and that was excluded on the same basis that he had not been arraigned.

The Court: There may be something in your contention, Mr. Hogan, but I don't think there is very
2121 much. However, I say that that is a point which you may reserve to the Circuit Court of Appeals. That is a question that I don't know has ever been passed upon by any other court, so far as I am advised.

Mr. Hogan: You mean other than Justice Frankfurter?

The Court: Yes—well, that did not present the same question.

Mr. Hogan: That presented the principle.

The Court: The principle, but not as applied to this particular case—the established principle.

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Mr. Hogan: Well I think if we use the principle and then apply the facts to the principle, I think we have got the principle involved in this case—

The Court (Interrupting): Well, as you probably know, and as you have read the discussions, there is quite a bit of contrariety of opinion about what the opinion of Justice Frankfurter actually means. I have read it two or three times and as I said at the time, I am not quite clear as to what he means other than other judges have indicated the same thing, and I believe that until we get some further expression from the Supreme Court the exact effect of that ruling is not going to be known. It is so given that it leaves quite a lot open to question.

2122 Mr. Hogan: Well I know but it is still the outstanding opinion so far and it has not been overturned.

The Court: One District Judge not so long ago felt it was not the right opinion and declined to follow it, I believe.

Mr. Hogan: But the trouble about that is, the Supreme Court has got the last say. What they say is final and whether we like it or not—

The Court: Well, of course, the McNabb opinion must be construed in the light of the facts of the McNabb case. In that case the FBI Agents took this man and kept him in confinement for some 24 or 48 hours, I believe; and they didn't let anybody see him; and he was subjected to the third degree, and the case was a most aggravated case as Justice Frankfurter pointed out. Now that certainly is entirely different when this man comes in a year later, or two years later, whenever it was, and voluntarily writes a letter. There was no compulsion on him to make him write that letter. There was no third degree. I understand that he wrote the letter at his own request. The facts of the two cases are so widely different that it is hard to see how the facts of the McNabb case could apply to this case even if there was no arraignment.

Mr. Hogan: But to follow that up, though, he
2123 was picked up in California and brought here and kept for two days, held incommunicado most of that

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time; and that set in motion his being put into the position in Leavenworth Kansas in the penitentiary of where this letter that was complained of was written.

Now there was an inducement offered to him in that letter. He had been in solitary confinement, as he told you—

The Court (Interrupting): But it was his own inducement—he wanted to get something, didn't he? But nothing was promised him.

Mr. Hogan: The inducement to get out of there was there, and the law is on that that any inducement, any promise, however slight, that motivates a man to make a statement, no matter how slight the inducement, cannot be used against him.

The Court: I think it is best for you to reserve that point. I have expressed my views on it. I think the cases are so widely different on the facts that the McNabb principle is not applicable in this case.

Mr. Hogan: Then the defendant says that not only the aforesaid grounds for a new trial materially and substantially affected and do now affect his substantial rights.

Wherefore, the defendant, Thomas Henry Robinson
2124 Jr., respectfully prays as follows: That the Court permit this defendant to file this motion and grounds for a new trial and that the Court fix a time not sooner than ten days for a hearing on said motion; that this Court grant to this defendant a new trial and that the verdict of the jury and the judgment thereon be set aside; and that this defendant be granted a reasonable time in which to file motion and grounds for a new trial. That motion has been accepted by the District Attorney.

The Court: I do not believe that there is much in that motion that we did not discuss during the course of the trial other than your references to the comment that the Court made upon certain phases of the evidence in its instructions.

As I understand the law, it is not only the right of the District Judge to so comment, but in some cases it is practically his duty to so comment and to call the attention of the jury to certain phases of the evidence which he thinks

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they should consider, provided that the Court makes it plain to the jury at the time that they are the sole judge of the facts and that those views are merely his views and are not binding upon the jury in any way.

I believe that two or three times during the instructions I specifically said that to the jury.

Now with reference to the further particular
2125 points that you refer to, about the letter that the defendant wrote, I repeated that admonition to the jury after I finished my comment upon it. Don't you recognize that principle to be the one that exists in federal courts?

Mr. Hogan: I recognize that, but I would like to point out what the effect of those comments were on the jury—

The Court (Interrupting): But, just a minute. If the law gives the court the right to make the comments, or the duty to make the comments, do we discuss the effect of it? If I have the right and duty to make it, I make it; and what effect it has is proper, isn't it? Certainly they do not expect the Court to make the comment if it is not to have any consideration by the jury. I had might as well not make it if it is not to be considered proper.

Mr. Hogan: Now Your Honor has used the word "duty" to make the comments. I don't know that it is the duty of the court to make comments. Some courts do, and some courts don't.

The Court: I don't consider that the duty of the Court in every case, and as you know I haven't done it in every case. I do do it occasionally in cases where I think comment properly should come from the Court, but this was one of those cases in which I thought certain facts should be pointed out to the jury.

2126 Mr. Hogan: Well will you permit me to tell Your Honor what effect I thought your comments had upon the jury?

The Court: Yes.

Mr. Hogan: Well now, in the first place, Your Honor mentioned the fact that the District Attorney, and for that matter the defendant's attorney, had omitted any reference to a letter written on a typewriter—

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The Court (Interrupting): I don't believe I said "omitted any reference"; I said they did not attach much importance to it.

Mr. Hogan (Continuing): And that letter was—

The Court (Interrupting): I think Mr. Inman did refer to it in his closing argument.

Mr. Hogan (Continuing): And that letter was, "I am the kidnapper of Alice Stoll." And in that letter there was some reference to a cut upon the head, but that that cut had been healed—

The Court (Interrupting): Partly healed.

Mr. Hogan: Partly healed. That unduly, as I take it, emphasized or, rather, impassioned the jury that the Court must have thought that—that it wanted the death penalty imposed or it would not have emphasized that particular point in the evidence.

The Court: No. Let me tell you where that **2127** came in the instructions. That came in the instructions on the question of whether or not this was a kidnapping or whether she went voluntarily with the defendant. I pointed out that the defendant had admitted writing that letter, and the letter in its opening sentence said, "I am the kidnapper of Alice Stoll," and that statement by the defendant was inconsistent with his present claim that she went voluntarily with him. You don't kidnap people that go with you voluntarily; and that when he claimed he did not hit her and force her to go when the letter said she did have a cut which had partially healed, that indicated that the cut must have been inflicted prior thereto. That all dealt with the question of whether she went with him voluntarily or not. Of course, she was liberated some days after that.

Mr. Hogan: But when the Court, in a case of this type, and when it is a serious life or death case, the jury is always influenced by what the Court says because they take the position that if the Court thinks that ought to be emphasized they should follow it. It has been my experience that the jury follow like sheep the Court's comments, as a rule.

The Court (Interrupting): Well what is the purpose

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of the Court's comments? Why should the law say that the Court should make them or can make them if they don't expect the jury to pay any attention to it.

2128 Mr. Hogan: But it is a question of whether that impassioned them, and got them against this defendant, and I believe that it did, otherwise I would not have incorporated it in this motion and grounds for a new trial.

And then another comment the Court made was with reference to Dr. Solomon and Dr. Crice. The Court told the jury that they had said, or that one of them had said, that they were members of the Lunacy Commission, and you said that you had examined the statutes and that you could find no such provision in the statutes for that.

The Court: Well, is there such a provision?

Mr. Hogan: Not that I know of, but I know that—

The Court (Interrupting): Well, isn't that a correct statement?

Mr. Hogan: That was a correct statement, but we are talking about the effect of it. I believe they said, "Well we are appointed from day to day."

The Court: When those doctors testified I challenged the correctness of their statement at the time. I asked them, I said "I don't know of any Lunacy Commission that you claim to be a member of. What is it?" And they tried to explain, and I said that I knew of no statute that creates one, and I tried to tell them what I thought the

statute was, but they both insisted that they were
2129 members of the Lunacy Commission. I examined the statutes afterwards and I couldn't find any Lunacy Commission, and I thought it was proper to tell the jury, in view of the evidence, what my finding was, and I think my findings were correct. I said in my instructions that I couldn't find. I said, "It might be there but I can't find it. If counsel will show it to me I will change these instructions to meet what the situation is."

Mr. Hogan: There wasn't any statute like that that I know of, and you finally backed them down on that when they were on the stand.

The Court: Oh, no, they left the stand, both insisting

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that they were members of the Lunacy Commission.

Mr. Hogan: Well suppose they did. That had the effect of tearing down the defense—

The Court (Interrupting): Well now do you think I should let the jury have an ~~im~~proper impression from what those witnesses testified? You are claiming fairness to your client, certainly the prosecution is entitled to fairness, too, and if they have given the jury an improper view of that question, that improper view should be corrected, shouldn't it?

Mr. Hogan: Then I think Your Honor should have come along and said to the jury that Dr. Cocke made a diagnosis that this man was a constitutional psychopath and then I asked him when he was on the stand, 2130 "If it could be shown that this man's condition is normal now, would you say that your diagnosis was wrong in the first place?" And he said, "I would."

Well now the evidence pointed very definitely to the fact that there was not anything wrong with this man as of the date he was standing trial. I think if you wanted to comment upon doctors' testimony, that situation now I think is true—

The Court (Interrupting): Well now, Mr. Hogan, you certainly don't think that when I start commenting on a few bits of evidence that I assume commenting upon every witness that testified? There were probably over one hundred witnesses who testified in this case, and—

Mr. Hogan (Interrupting): Well, Judge, did you comment upon any of the witnesses for the prosecution?

The Court: I don't think that I did. I don't think that I was affected by some of their witnesses like I was by some of the witnesses—one or two that was presented for the defense.

Mr. Hogan: Do you think it was fair?

The Court: Well now Mr. Kirtley's testimony that you referred to was to me so out of reason and unreasonable that I don't think the court should let such tes- 2131 timony go by without his comment as to what he thought about it. There is a man who just testified to a story that hardly holds water.

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Mr. Hogan: Do you think then that it was fair to let go unchallenged the statement of Mr. and Mrs. Palmer that they had erected a sign at this tourist place down there which displayed Falls City beer when Falls City beer was not even legalized or, rather, beer generally was not even legalized until 1932 or 1933.

The Court: Well didn't such signs appear when near beer was in existence?

Mr. Brown: Why of course they did—there was no question about it.

Mr. Hogan: They said that sign was put up in 1931—

The Court (Interrupting): Well we had near beer then, didn't we?

Mr. Brown: Yes we did.

The Court: I think we had near beer for several years before prohibition was ruled out. People advertised their near beer as beer; they didn't put up "Falls City near beer."

Mr. Hogan: But the inference was that that represented the advertisement of beer. I think Your Honor should have—

2132 The Court (Interrupting): Well, it was beer. What was it? Less than 2¾% alcoholic content? I don't remember—

Mr. Brown: 3 point 2 is what it was, I think.

The Court: I don't remember what the percentage was, but it was beer and the alcoholic content was limited. That was all.

Mr. Hogan: Not until 1933.

The Court: I think you are mistaken about that. We didn't have full-strength beer until 1933, but we had beer with a certain percent alcoholic content before that time.

Mr. Hogan: I don't think so, Your Honor.

The Court: Well I may be wrong; that was my remembrance of it.

Mr. Hogan: The first beer that we had was what we call weak beer which was 2¾% alcohol back in 1932, or shortly after President Roosevelt was first elected.

The Court: Well I just don't recall that now. At least at the time the instructions were given I thought your

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argument on that point was—

Mr. Brown (Interrupting): Here is a Falls City salesman sitting right on the jury (indicating the jury in another case)—we can ask him. Did you have near beer?

Juror: Yes, sir.

2133 Mr. Brown: Was it advertised as “Falls City beer?”

Juror: Yes, it was advertised as beer.

The Court: Well that was not in the evidence.

Mr. Hogan: That was not in evidence.

The Court: No, but it merely indicates the view that I had about it. That is the reason I didn't comment upon it. I thought the point—well I could have made it but I didn't think it had very much merit in it. If I had made it I would have had to qualify it, which probably would have been worse than not making it at all.

Mr. Hogan: And then Mr. Allen testified that there wasn't any place on those premises down there, either he or the Palmers, or probably both, to accommodate tourists, and I brought the man in who owned the place and he contradicted that—Mr. Carlisle.

The Court: I don't remember whether it was Mr. Allen or Mr. Palmer, but one of them said they had that garage there with rooms over it.

Mr. Brown: Mr. Allen.

Mr. Hogan: And he said that there wasn't an inch of space down there to accommodate tourists.

Mr. Brown: They never rented an inch of space; it was all taken up by his family—his son and his daughter who was expecting a baby and another unmarried

2134 daughter and another married daughter.

The Court: I think those three witnesses, Mr. Allen and Mr. and Mrs. Palmer, all testified that at no time while they were there had they rented any of the property to anybody else or had anyone outside of their family at any time on there or living there except that old man about 70 years old who pitched a tent there.

Mr. Brown: That is correct.

Mr. Hogan: And then another thing, the government laid particular stress that this defendant was deliberately

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telling a falsehood about that, yet he specifically mentioned some cabins, cottages I believe he said, beyond the log cabin, and the government didn't go over there and come back and even attempt to show that those cabins were not there.

The Court: Were those cabins designated?

Mr. Brown: Not named at all. "Beyond the log cabin" might be from here to Chicago.

Mr. Hogan: He described them in detail—

The Court: But he didn't place them, he didn't give any name to them, did he?

Mr. Hogan: He said "log cabins"—

The Court (Interrupting): Well how could they rebut that? "Cabins beyond the log cabin," why anyone who came in to testify about that you would say it was
2135 another one.

Mr. Hogan: Well it shows that he was not trying deliberately to deceive or cover up or smear as they would have you believe, because he said down on the Dixie Highway he was driving a Chrysler car and described it as being in a grove of trees; and over here he described the cottages with a store in front. They made a great point of his smear campaign on that and if he had been on a smear campaign he would have said, "Why we didn't go anywhere. We went up some lonely road." And they couldn't have checked on that.

The Court: It was just as much of a smear wherever they went, wasn't it?

Mr. Hogan: If untrue, yes. Now I have talked to this defendant and I understand from him and I will tell you in exactly his own words that as early as 1936, at the instance of Mr. J. Edgar Hoover—

Mr. Brown (Interrupting): Now I am going to object to any remarks to the Court unless they came out on the trial of this case.

The Court: I don't think we want hearsay testimony, do we, now?

Mr. Hogan: Only if Your Honor is interested in knowing that as early as 1936 this defendant had given Mr. McDonough a statement of the facts substantially—

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2136 Mr. Brown (Interrupting): I am going to object to that; he is making an argument which is outside the record itself.

The Court: Well that was a question of fact which was submitted to the jury, wasn't it? The jury decided that question of fact against you, and I am not going to review that question of fact.

Mr. Hogan: Well isn't Your Honor interested in knowing that they had that information, and that this was not a concocted defense interposed at the last minute?

The Court: I had that information some time ago that that same point was made back in 1936 or 1937.

Mr. Hogan: 1936, while he was in Leavenworth and while there was no idea that he would ever be back for trial.

Mr. Brown: He made it in his motion and grounds for a new trial in 1936 when Mr. Clem Huggins and Mr. Bob Hogan were associated in his motion for a new trial; and Judge Hamilton made them strike it out of the motion.

Mr. Hogan: I am talking about the statement that this defendant gave to one of the FBI Agents in 1936 while he was at Leavenworth, Kansas.

The Court: What does that prove? He made the claim then and he makes the claim now. Does that make it true because he made it two or three times?

2137 Mr. Hogan: They claim the first time they heard about this highway—this Dixie Highway instance was when he testified from the stand.

Mr. Brown: I claim that, and I say it is the first time I heard it.

Mr. Hogan: You do not claim that the FBI or Mr. Hoover did not know about that?

Mr. Brown: I have no idea what every member of the FBI—there are over 3,000 FBI Agents, and I have no idea what they all know. I now say and I now claim that the first time it was ever brought to my attention was when he testified from the stand.

Mr. Hogan: Well I say if the Justice Department is holding out on the District Attorney, there is something wrong.

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The Court: Certainly the facts as indicated by Mr. and Mrs. Palmer on direct would indicate that the FBI or Mr. Brown's office did not know anything about it until after the defendant testified to it here in court.

Mr. Hogan: Mr. and Mrs. Palmer came in and bought the place in July, and that they did not come back to the place—

The Court (Interrupting): But what I mean, my point is this: If Mr. Brown had known about it, which you claim he does, he would not have been waiting until
2138 the last few days of the trial to find witnesses to rebut it.

Mr. Brown: I wouldn't have stayed up all night looking for those witnesses. I will tell you that.

The Court: That would have been done some time before:

Mr. Hogan: But what I am trying to say is they say that this boy at the last moment deliberately injected into this a defense destined or designed to smear Mrs. Stoll, when that has been his contention all the time that he had known her.

Mr. Brown: If it had been, Mr. Hogan would have brought it out when Mrs. Stoll was on the stand.

The Court: Oh, I have no question but that that was his defense. He made it two or three times.

Mr. Hogan: And I want to say my own self that—

The Court (Interrupting): It was clearly given to the jury.

Mr. Hogan (Continuing): I want it to show that it was not a product of my defense, but it was a defense that is and he has held it ever since he was in Leavenworth, Kansas in 1936.

The Court: Mr. Hogan, I can say this, and I am glad to have the opportunity to say it, that I appointed you as counsel for this defendant because the law requires that some counsel of ability and integrity represent such
2139 a man. It was a burden that had to be assumed by some member of the local bar; whoever undertook it had hard work and no compensation. I requested you to take it, and you did not want the job. I thought that

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due to the experience that you had had and of some connection with your former associate that you had had with this case, and certain facts that you knew, might make you more available and acceptable as attorney than somebody who knew nothing about the case; and at my request, not your own, and probably over your wishes, you told me it would require a lot of work and that it would take a great deal of your time and that you could ill afford to do it, and I requested you to do it. You assumed that obligation which probably rests upon you as a member of the bar and you have performed it very nobly. You have handled this case in a very efficient and industrious way. You have worked hard on it. You have represented this man as well as any lawyer at this bar could have represented him. You made every point that I think could have possibly been made and you argued it with earnestness and zeal. And you are duty-bound, when your client tells you a story which he insists go to the jury, that that client be permitted to tell that story to the jury and if Robinson wanted to tell that story to the jury, you would have been remiss in your duty if he did not tell it if he insisted that it was the truth and wanted to tell it.

2140 I think that the verdict in this case is in no sense a reflection on you. The way you have handled the case is no reflection on you. And I want to commend you very highly for the zeal and earnestness in which you have handled this case. I think it is a very fine recommendation of your ability as a lawyer and your willingness to do your duty, even though it was a most arduous one and at times an unpleasant one. I don't think there ought to be any doubt in the minds of the community here that there is any reflection on you in the conduct of this case. I am very glad to make that statement at this time.

You had a case that was very, very difficult. We all know that from the evidence which we have heard. It was practically impossible, as the evidence developed, to secure a verdict of acquittal.

Mr. Hogan: If Your Honor please, if you appreciate my services, I will ask you not to kill my client.

The Court: Does the defendant himself wish to say

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anything?

Mr. Robinson: Your Honor, the District Attorney has made several allegations that I conducted a smear campaign from the beginning of my forced marriage. I just want to say at the outset that that forced marriage was not a smear campaign. The jury returned a verdict that upheld my contentions at that time. And the statement that

I was alleged to have made to Mr. Atkinson in this
2141 case, concerning three girls, that I would smear them if they came into court and faced me, I just want to take the opportunity now to deny that altogether. There were no three girls, there were only two girls, and that they did face me in court and I did not smear them, as I was alleged to have said.

In this case, as Mr. Hogan, I gave these facts to the FBI at the instance of Mr. J. Edgar Hoover in 1936, and I did not concoct this plan here in this court in an effort to win this case. I told the truth to the best of my knowledge and belief at that time. My whole life has been laid out here before the Court. It is difficult to tell anybody's life story without a few discrepancies, but I do want to point out that Your Honor himself stated that I left Louisville in August of 1931 to go to Chicago, at which time that Beach Grove Camp was not in existence, but I think by Mr. Brown's own figures, which I did not have available at that time, showed that I was working for the Mutual Life Insurance Company in the Starks Building until September 12th, and I was working there for a man by the name of Mr. Miller, and I had a cash bond up with Mr. Miller while I was in the insurance business, and it was many weeks thereafter before I was able to recover this cash bond as a result of them having to check my accounts.

The Court: I believe I took your own statement on the time that you left Louisville. I checked back
2142 the evidence on it and, as I recall, you yourself stated that you left Louisville the last of July or the 1st of August.

Mr. Robinson: Well I say, Your Honor, that that was a discrepancy in telling my life story that could not have been avoided at that time, but I think the record that Mr.

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Brown has will show definitely that I was mistaken in my testimony on that point.

The Court: The point is immaterial, really, isn't it? The evidence shows—

Mr. Brown (Interrupting): October 10th—

The Court (Continuing): October 10th or 12th was the first time, and it makes no difference whether you left in August or September, they both are prior to October 12th.

Mr. Robinson: And as I say, I was here several weeks following that, but I don't make an issue of that, but I just want to point out that it was a mistake as to time and place on my part at that time.

And I want to further say that I think I am sane at this time but as I look back over that period of 1934 I am fully convinced that there was something wrong with me at that time. There is a lot of conflicting testimony here from psychiatrists but regardless of what they all say, I know in my own mind that I was not sane. There was something wrong with me.

2143 I want to further say that there are what I think are mitigating circumstances in this case. I am not a criminal in the sense of the word it is usually conceived. I had a good school record, and I had a good employment record. Several of the government's own witnesses got on the stand and gave me a highly good recommendation.

I was convicted in this court and went to Alcatraz Prison and served six and a half years there. Formerly I was at Leavenworth and I was at Atlanta. During the course of my time in all three of those institutions I maintained a 100% clean record, and the prison authorities here so testified. I made a model prisoner, and I want to ask Your Honor that I be permitted to go back to some penitentiary and create a new life for myself in that penitentiary rather than to receive the death penalty.

I thank you.

The Court: Now the question of sanity or insanity on October 10, 1934, was at least one of the chief issues in this case. That was a responsibility for the jury to de-

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cide. I know that the defendant contends that he was not sane at that time, just like he has stated at present. He stated that to the jury but the jury, however, did not think his contention was sound and they, as triers of the facts, decided otherwise. It is not for me to review the jury's verdict on a question of fact at that time.

2144 about which the evidence was conflicting and about which there was more than an abundance of government proof to sustain their decision.

And the other question of fact, as I pointed out to them, was likewise disputed and for the jury to decide, and they have passed upon it. If either one of these questions of fact had been decided the other way, I told the jury specifically in my instructions that they should return a verdict of not guilty. They gave consideration to all of the evidence and found both of those questions of fact against you. I think so far as the question of facts is concerned, there is nothing for me to do but accept them.

Of course, a case of this kind presents a very difficult problem for any trial judge. I have given a great deal of consideration to the question involved because such a duty is a heavy responsibility, and of course, a rather unpleasant one—a very unpleasant one.

I have tried to consider the manner of the statute as to what it means, as to what controls. It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty. That is only my view,

2145 but from my experience and from my own thought in the matter, I doubt very much, even if they had made such a recommendation, the Court would have considered it, except for the testimony on the part of the defendant, which I am accepting as untrue as the jury so found it and, as I have stated, at the time I thought the government's evidence overwhelmingly supported their contention in the matter.

It seems to me that the purpose of this statute is that,

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when twelve men or women have considered this case and heard everything about it in the length of time they have, and have given it their careful consideration for two hours or more, and all of them have reached the conclusion that punishment should be one by death, the Court should adopt such recommendation unless there are facts shown to it which shows that such recommendation was out of line.

The Court does not feel in this case that such recommendation was out of line and, accordingly, it is going to accept that recommendation although it is a most unpleasant duty.

This case should be appealed. Any question about the Court's rulings in this case, the Circuit Court of Appeals should pass upon it and give this defendant every right that he has.

If it is felt that the recommendation, or the
2146 acceptance of the recommendation, is severe, it is always the remedy of appealing to the President of the United States for a commutation or a change of it.

The Court's ruling in this matter is in no sense final, if others higher in authority feel that the jury's recommendation or the Court's thoughts in the matter are not in line with what the statutes justify.

Accordingly, the sentence of the Court will be punishment by death, inflicted in the manner prescribed by the laws of the State of Kentucky, which is electrocution, as provided by Section 542, Title 18, of the United States Code Annotated.

For the purposes of permitting the defendant ample time to take his appeal, or perfect his appeal, and have his case presented to the Court of Appeals, the execution of the sentence will be postponed and the date set by the Court at this time will be Friday, March 10, 1944.

State of Kentucky, }
 County of Jefferson, } Set.

I, Roberta Gentry, Official Reporter for the United States District Court for the Western District of Kentucky, hereby certify that the foregoing 172 to 217 pages, pro-

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ceedings had before the trial, including the arraignment; and the 218 to 1520 pages, proceedings had during the trial; and the 1520 to 1548 pages, proceedings had on December 13, 1943, after the trial and before the sentence and including the sentence, is a true, complete and correct transcript of the evidence introduced and heard and offered to be introduced and rejected; and all objections, exceptions and avowals concerning the same, as well as all papers and exhibits offered to be used or used as evidence on the trial; and all of the instructions given; and the verdict of the jury; and all of the proceedings had preliminary to the trial of this case, including the arraignment, and all of the proceedings had during the trial, and all of the proceedings had after the jury returned the verdict, including the sentence, in the case of United States of America vs. Thomas Henry Robinson, Jr.; that the proceedings were reported in shorthand and on the electric recording machine and transcribed by Mary Louise Fichtner and me; and that this transcript includes all of the proceedings as above set out on the trial of this case from September 28, 1943, including December 13, 1943, the date of the sentence.

I further certify that I am not related to any of the parties to this litigation by blood or marriage; and that I am in no way interested in the outcome of said litigation.

2148 Given under my hand as Reporter aforesaid, this the 6th day of January, 1944.

Roberta Gentry,
Official Reporter.

At the conclusion of the evidence in chief on behalf of the United States, defendant by counsel moved the Court to direct the jury to return a verdict of not guilty because the United States had wholly failed to prove the allegations charged against the defendant in said indictment, said motion being overruled with exceptions allowed to defendant.

At the conclusion of all the evidence in the case produced on behalf of the United States and on behalf of the

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defendant Thomas Henry Robinsen, Jr., the defendant by counsel renewed its motion for the Court to instruct the jury to find the defendant not guilty because on all the evidence introduced there was no proof of the allegations charged against this defendant in said indictment, which motion was overruled with exceptions allowed to the defendant.

On Saturday, December 11, 1943, all evidence both on behalf of the United States and on behalf of the defendant Robinson having been completed, request was made on behalf of the defendant Robinson to the Court to charge the jury as follows:

"1. The argument of the United States Attorneys is not evidence, and is not entitled to any additional weight or respect by reason of the fact that such argument is made by such government officials.

"2. 'REASONABLE DOUBT' is that frame of mind which forbids you to say, all the evidence considered and weighed, 'I have an abiding conviction of the defendant's guilt.' If you are in the frame of mind where, if it was a matter of importance to you in your own affairs, away from here, you would pause and hesitate before acting, then you have a reasonable doubt. A reasonable doubt exists where, after the entire comparison and consideration of all the evidence, the minds of the jurors are left in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

"3. Witness Ann Hobbs Woollet was asked whether or not she had made certain statements previously to witnesses Joseph Hayse and Nellie Stoess Hayse, and witness Woollet stated that she had not consulted attorney Hayse and had not made statements asked of her in the foundation questions; witnesses Joseph Hayse and Nellie Stoess Hayse stated that witness Woollet had consulted witness attorney Hayse and that she had made certain statements to attorney Hayse and Nellie Stoess Hayse which were reduced to writing on September 9, 1935, and then, when witness Woollet was confronted with such testimony and facts, and when shown an affidavit said by said witnesses Hayse to contain witness Woollet's statements, witness Ann

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Hobbs Woollet then said she had signed the statement in question but did not remember giving the statements contained therein. If you believe that Ann Hobbs Woollet intentionally made a false statement, or falsely or intentionally stated in answer to the foundation question that 'I don't remember,' or 'I do not recall,' or 'I don't know,' or believe that witness Ann Woollet intentionally made a false statement with respect to any material fact, you may disregard all of her testimony.

"4. Testimony of Ann Hobbs Woollet should be received by the jury with caution and be carefully scrutinized.

"5. No crime under the indictment in question could take place until Alice Speed Stoll was transported, taken, or carried away in interstate commerce after first having been held for ransom or reward, by defendant, Thomas Henry Robinson, Jr.

"6. There must be evidence of substantial value that Alice Speed Stoll was transported, taken, or carried away, in interstate commerce after first having been held for ransom or reward, by defendant, Thomas Henry Robinson, Jr.

"6. There must be evidence of substantial value that Alice Speed Stoll was held for ransom or reward and while so held was transported, taken or carried away in interstate commerce; and that she was not a child of Thomas Henry Robinson, Jr.

"7. The death penalty may not be recommended in this case, and may not be imposed, prior, to the imposition of sentence upon defendant, Thomas Henry Robinson, Jr., Alice Speed Stoll was released unharmed, if you should believe that she was transported in interstate commerce after, first having been held for ransom or reward by defendant, Thomas Henry Robinson, Jr.

"8. There being a total absence of evidence of the physical condition of Alice Speed Stoll at the time of the trial of defendant, Thomas Henry Robinson, Jr., and likewise a total and complete lack of any evidence of her physical condition and whether or not she is in a harmed or unharmed physical condition at the time of imposition of sentence (if there is to be an imposition of sentence) upon

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Thomas Henry Robinson, Jr., now the jury may not recommend any imposition of the death penalty in this case.

"9. If the facts as proven are as consistent with innocence, as they are of guilt, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"10. Defendant, Thomas Henry Robinson, Jr., cannot be found guilty, if the proven facts are consistent with innocence.

"11. The terms 'unlawfully did then and there knowingly transport and cause to be transported and carry away in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom,' mean seizing and carrying away and holding for ransom contrary to law. If it was lawful or if Alice Speed Stoll went willingly, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"12. The questions you are to decide are whether the defendant on trial is guilty, first of unlawfully holding for ransom or reward Alice Speed Stoll, and secondly, of unlawfully transporting her in interstate commerce while so held. If you are not satisfied that Alice Speed Stoll was so held for ransom or reward or that she was transported in interstate commerce while being so held, you must acquit this defendant.

"13. If any of the elements set out in the foregoing charges 11 and 12 are missing, you must acquit the defendant.

"14. You are instructed as a matter of law that the defendant is presumed to be innocent. He is not required to prove himself innocent or to produce evidence at all on that subject. In considering the testimony, you must consider and view it in the light of this presumption with which the law clothes the defendant. It is a presumption that abides with him throughout the trial of the case until the evidence convinces each individual juror of his guilt beyond all reasonable doubt.

"15. The indictment is no evidence, and you should not consider it as such. It is merely an accusation which the Government, the plaintiff, is required to prove in every

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detail, and the burden of proving every detail of the indictment is upon the Government.

“16. The defendant is not required to prove himself innocent or to produce evidence at all on the subject of his innocence. As a matter of strict logic, the jury should conclude from the fact that the defendant is presumed to be innocent and that the burden of proof is upon the Government that he, himself, is not required to prove innocence or to produce evidence.

“17. You are instructed as a matter of law that the burden of proof is always upon the prosecution. It is not sufficient to establish a probability, though a strong one, arising from the doctrine of chance, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact beyond a reasonable doubt.

“18. The burden of proving each essential element of the offense is placed upon the prosecution, and until each essential element is established to your satisfaction beyond any reasonable doubt, you can not return a verdict of guilty as indicted. You are instructed as a matter of law that before you would be justified in returning a verdict of guilty, you must find that the defendant committed not one, not some, but all and each and all of the acts charged against him as having by him been committed as charged in the indictment.

“19. If you believe beyond a reasonable doubt that the defendant is guilty of some of the acts charged in the indictment, but you have a reasonable doubt as to whether he is guilty beyond a reasonable doubt of each and all of the acts charged in the indictment, you cannot find him guilty of any of the acts so charged.

“20. Every material fact, whether direct or circumstantial, essential to the establishment of the guilt of the accused, must be proven to the satisfaction of the jury beyond all reasonable doubt.

“21. The accused, defendant herein, being charged with crime, is entitled to have benefit of all the principles of law, and the rules of practice and evidence, designed to safeguard life and liberty.

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"22. Insanity as a defense: The jury is instructed that if they believe from the evidence that at the time of committing the acts, or any of them, charged in the indictment, the defendant, Thomas Henry Robinson, Jr., was suffering from such a perverted and deranged condition of his mental and moral faculties as rendered him incapable of distinguishing between right and wrong, or unconscious at such times or time of the nature of the acts, or any of them, charged in the indictment, while committing the same, or any of them, or where, though conscious of them, and able to distinguish between right and wrong and to know the acts were wrong, yet his will,—that is to say, the governing power of his mind, was, otherwise than voluntarily, so completely destroyed that his actions, or any of them, were not subjected to it, but were beyond his control; or, if you believe that at such time or times mentioned in the indictment, that said defendant was not able to understand or appreciate the nature or consequences of his acts, or any of them; or, if knowing and appreciating the nature and consequences of his acts, yet did not have or possess such will power to resist the impulse to do the acts, or any of them, mentioned in the indictment, it is your duty to acquit this defendant, and in such case your verdict shall be 'NOT GUILTY.'

"23. The defendant, Thomas Henry Robinson, Jr., was twice legally adjudicated insane, and had never been restored to sanity at the time of, or prior to the indictment. The presumption of his insanity exists and the Government is under the burden to prove that he was sane at the time of committing the acts charged in the indictment beyond a reasonable doubt. The burden is not upon this defendant to prove insanity and no presumption in this case exists that this defendant was sane at the time of the commission of the acts charged against this defendant in said indictment.

"24. The presumption does not exist that although this defendant was twice adjudicated insane, or that he was adjudicated insane, that time has eradicated the presumption of insanity. That presumption is never eradicated.

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but must be proven by the Government beyond a reasonable doubt."

Thereupon counsel for the United States made request to the Court that the jury be charged as follows:

"1. That with reference to the testimony of Doctors Solomon and Crice that they were members of the Jefferson County Lunacy Commission, duly constituted under the laws of the State of Kentucky, that under the laws of the State of Kentucky there does not exist any office or any commission known as the Jefferson County Lunacy Commission or in other words which would connote a standing or official appointment as a member of a lunacy commission.

"2. That in a case of an appointment of a physician to examine an incompetent, that said appointment is for a single case and that a new order is drawn for each separate case."

Thereupon the cause was argued to the jury by counsel for the United States and by counsel for the defendant, after which the Court charged the jury as hereinbefore appears.

The above and foregoing bill of exceptions contains in detail and by reference all of the testimony and all proceedings had before the trial of Thomas Henry Robinson, Jr., had during the trial of Thomas Henry Robinson, Jr., and had on December 13, 1943, the day the said Thomas Henry Robinson, Jr. was sentenced by the District Judge.

Now, in furtherance of justice and that right may be done, the defendant Thomas Henry Robinson, Jr. presents the foregoing as and for his bill of exceptions in the above-entitled cause and prays that the same may be settled, allowed, signed and filed as such.

Robert E. Hogan,
Attorney for Thomas Henry
Robinson, Jr.

This is to certify that the foregoing bill of exceptions on behalf of the defendant Thomas Henry Robinson, Jr. in the above-entitled cause was served on me on the 11th day of February, 1944, and I agree that the same may be

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settled and signed as a bill of exceptions in this cause by the Honorable Judge of said court.

Witness my hand this 11th day of February, 1944.

Eli H. Brown, III,
United States Attorney,
Western District of Kentucky.

I, Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, and the judge before whom the above-entitled cause was tried, do hereby certify that the foregoing bill of exceptions in the above-entitled cause contains all the proceedings had on the specific dates mentioned from September 28, 1943, to and including December 13, 1943, all the evidence offered, admitted or adduced, together with all objections made and exceptions allowed by and on behalf of the United States or the defendant Thomas Henry Robinson, Jr., together with the rulings thereon, and all avowals made and all exhibits introduced, and said bill is hereby ordered allowed, signed and settled as a true and correct bill of exceptions in said cause and made a part of said record.

Shackelford Miller, Jr.,
U. S. District Judge,
Western District of Kentucky.

February 18, 1944.

**MOTION TO TRANSMIT ORIGINAL EXHIBITS OR
PHOTOSTATIC COPIES TO CIRCUIT COURT OF
APPEALS**—Filed February 12, 1944.

Come the United States by counsel and the defendant by counsel, and move the Court for an order transmitting to the Circuit Court of Appeals for the Sixth Circuit all original exhibits or photostatic copies of said exhibits. The Court is informed that the exhibits are numerous and bulky, consisting of maps, photographs, records of institutions and corporations, and that it will be both expensive and impossible to include within the printed transcript of the record the said exhibits.

Eli H. Brown, III,
United States Attorney.
Robert E. Hogan,
Attorney for
Thomas Henry Robinson, Jr.

**ORDER TRANSMITTING ORIGINAL EXHIBITS OR
PHOTOSTATIC COPIES TO CIRCUIT COURT OF
APPEALS**—Entered by Judge Shackelford Miller, Jr.,
February 12, 1944.

Upon consideration of the joint motion of the United States and of the defendant,

It is Ordered that the original exhibits filed on the trial of the above-styled case, or photostatic or photographic copies of said exhibits which have been compared with the originals filed, be transmitted to the Sixth Circuit Court of Appeals for the Sixth Circuit for the consideration of that Court on the appeal of said case without the necessity of printing the exhibits in the transcript of the record.

ORDER APPROVING AND FILING BILL OF EXCEPTIONS—Entered by Judge Shackelford Miller, Jr., February 18, 1944.

This day came the defendant, Thomas Henry Robinson, Jr., by his attorney and tendered his Bill of Exceptions, and same having been examined is now approved, ordered filed and made a part of the record.

ORDER FILING EXHIBITS—Entered by Judge Shackelford Miller, Jr., February 24, 1944.

It appearing that Mrs. Roberta Gentry, official court reporter, has tendered to the Clerk of this Court all exhibits introduced on trial of the above cause, both on behalf of the Government and of the defendant,

It is hereby Ordered that all exhibits be marked "Filed" in the records of the Clerk of this Court, and on the appeal of this case, in conformity with the order transmitting the exhibits to the Sixth Circuit Court of Appeals, that the Clerk of this Court forward to the Clerk of the Sixth Circuit Court of Appeals all exhibits in this case.

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DOCKET ENTRIES.

Oct. 20, 1934—Indictment returned and filed.

Sept. 28, 1943—Petition for Writ of Habeas Corpus granted by U. S. Dist. of Calif. Sou. Div. Aug. 9, 1943—Thos. Robinson, Jr. delivered to U. S. Marshal, Lou., Ky.

Sept. 28, 1943—Thomas Henry Robinson, Jr. brought into open court in custody of U. S. Marshal. Asked the Court to appoint 2 attorneys. Robert E. Hogan and J. Paul Keith, Jr. appointed.

Deft. objected to Robert E. Hogan.

Court recessed to later in day.

Docket Entries

Sept. 28, 1943—At 11 a. m. Court reconvened and deft. appeared with counsel R. E. Hogan and announced that after discussing matter with counsel, appointment of counsel was satisfactory.

Case passed for arraignment to Sept. 30, 1943 at 10 o'clock a. m.

Deft. committed to Jefferson county jail.

Sept. 30, 1943—Eli H. Brown, III and J. D. Inman, for U. S. Deft. and counsel stated no claim as to insanity would be made now but such plea would be made later on Formal arraignment.

Written application for appointment of 2 attorneys filed, asking to proceed and defend this case in forma pauperis—affidavit in forma pauperis filed.

Plea in abatement filed.

J. Paul Keith, Jr. asked permission to withdraw as counsel.

Deft. consented to proceed with 1 attorney for present.

J. Paul Keith, Jr. permitted to withdraw.

Plea in abatement passed for argument to Oct. 6, 1943, 10 a. m.

Oct. 5, 1943—Motion to strike Plea in Abatement filed by U. S. with supporting affidavits.

Motion for appointment of psychiatrists filed by U. S.

Memorandum of Authorities on Motion to strike filed by U. S.

Additional memorandum on Motion to strike filed by U. S.

Oct. 6, 1943—Motion filed by deft. for order allowing deft. to inquire into evidence of Grand Jury returning this indictment.

Affidavit filed by deft's counsel in support of motion.

Memo of decisions in support of deft's plea in abatement filed.

Docket Entries

- Oct. 6, 1943—Motion by deft. for Rule to compel U. S. to reply to Plea in Abatement.
 Deft's motion to strike plaintiff's motion for appointment of psychiatrists filed.
 Deft's Motion to dismiss filed.
 Deft's Motion to elect filed.
 Deft's Demurrer filed.
 Deft's Waiver as to Sanity filed.
 Order that U. S. Motion to strike sufficient ans. to Motion for Rule—exc. for deft.
 Order overruling motion to strike as to appt. of psychiatrists—exc. for deft.
 Order appointing psychiatrists.
 Order overruling Deft's Motion to elect—exc. for deft.
 Order overruling Deft's Demurrer—exc. for deft.
 Order overruling Motion to dismiss—exc. for deft.
 Order overruling Motion to procure affidavits from Grand Jurors.
 Order overruling deft's oral motion for bail.
 1 U. S. praecipe filed—issd. 1 subpoena—executed.
 Order sustaining U. S. Motion to strike deft's plea in abatement.
 Order permitting deft. to proceed in forma pauperis.
- Oct. 13, 1943—Eli H. Brown, III, U. S. Dist. Atty. for U. S.
 Thomas Henry Robinson, Jr. in person and by his counsel Robert E. Hogan.
 Court stated psychiatrists reported defendant mentally sound and competent.
 Deft. waived reading of indictment.
 Plea not guilty.
 Assigned to Nov. 29, 1943, for trial * * *
- Nov. 9, 1943—Deft's Motion for Order of personal attendance of Dr. Leon Solomon and Dr. Thomas J. Crice filed.

Docket Entries

- Nov. 9, 1943—Supporting affidavit filed.
 Motion sustained—Order personal attendance granted Court to set fee later (at exp. of U. S.).
- Nov. 24, 1943—Defts. Motion for subpoenas for witnesses filed.
 Defts. Affidavit (forma pauperis) filed.
 Order overruling defts. motion for witnesses with exceptions to deft. U. S. to subpoena same witnesses.
- Nov. 27, 1943—Affidavit of Harold Hall, Dep. U. S. Marshal as to service of list of jurors and witnesses on deft. and his counsel filed.
- Nov. 29, 1943—Order for 2 additional jurors as alternates.
 9:30 a. m. Eli H. Brown III and J. D. Inman for U. S.
 Robert E. Hogan for deft.
 Both sides announced ready for trial.
 12 Jurors called and count 2 of the Indictment stated to them by the Court.
 Jurors questioned by Mr. Brown and Mr. Hogan.
 Jury sworn to answer questions—admonished.
 Adjourned at 9:30 p. m. to Nov. 30, 1943, 9:30 a. m.
- Nov. 30, 1943—12 jurors selected and sworn—9:30 a. m.
 2 p. m. 1 alternate juror sworn.
 Deputy marshals and special bailiff sworn to guard jury.
 Opening statement by J. D. Inman.
 Statement reserved by defts. counsel.
 Evidence for U. S. Begun.
 At close of night session jury admonished and case cont. to Dec. 1, 1943—9:30 a. m.
- Dec. 1, 1943—Court reconvened and evidence for U. S. resumed.
 Adjourned at 5:30 p. m. to Dec. 2, 1943—9:30 a. m.

Docket Entries

- Dec. 2, 1943—Court reconvened—evidence for U. S. resumed.
Adjourned at 5:30 p. m. to Dec. 3, 1943—9:30 a. m.
- Dec. 3, 1943—Court reconvened. Evidence for U. S. resumed.
Adjourned until Dec. 4, 1943—9:30 a. m.
- Dec. 4, 1943—Court reconvened—Evidence for U. S. concluded.
Adjourned at 12:45 p. m. until Dec. 6, 1943—9:30 a. m.
- Dec. 6, 1943—Court reconvened.
Motion to strike and exclude Govt. exhibits—ruling reserved.
Motion for directed verdict by deft. filed—overruled ex.
Defendant's evidence introduced.
Adjourned to Dec. 7, 1943—9:30 a. m.
- Dec. 7, 1943—Court reconvened—evidence for deft. resumed.
Adjourned to Dec. 8, 1943—9:30 a. m.
- Dec. 8, 1943—Court reconvened at 9:30 a. m. and recessed to 2:30 p. m. on account illness of 2 jurors.
At 2 p. m. Court reconvened—1 juror absent.
Alternate juror was directed by Court to take the place of absent juror.
Evidence for deft. resumed.
Absent juror discharged by Court.
Motion and affidavit for personal attendance of Dr. H. B. Brackin filed by deft. and for payment of fees and expenses to be paid by U. S.
Court adjourned at 9:40 p. m. until 9:30 a. m. Dec. 9, 1943.
- Dec. 9, 1943—Court reconvened and evidence for deft. resumed.
Adjourned until 9:30 a. m. Dec. 10, 1943.
- Dec. 10, 1943—Court reconvened and evidence for deft. resumed.

Docket Entries

Dec. 10, 1943—Defense rests.

Rebuttal evidence for U. S.

At 10 p. m. adjourned until Dec. 11, 1943,
9:30 a. m.

Dec. 11, 1943—Court reconvened—evidence for deft. in rebuttal heard—motion for directed verdict at close of case.

Case argued by Mr. Inman, Mr. Hogan and Mr. Brown.

Request to charge jury filed by U. S. and deft.

Jury instructed—retired.

Verdict “guilty” with recommendation of death penalty.

Judgment suspended until Dec. 13, 1943.

Dec. 13, 1943—Defts. Motion in arrest of judgment filed.
Judgment.

“Death penalty.”

to be executed Friday, March 10, 1944, at State Penal Inst., Eddyville, Ky.

Motion and Grounds for new trial filed.

Dec. 14, 1943—Application for leave to proceed in forma pauperis filed—affidavits filed.

Additional Grounds for new trial filed.

Dec. 16, 1943—Response of U. S. to certain portions of Motion and Grounds for new trial filed.

Notice of Appeal to U. S. Circ. Ct. of Appeals filed.

Return on same served on Eli H. Brown III by U. S. Marshal.

Notice and Grounds of Appeals filed—filing notice accepted by Dist. Atty.

Order sustaining application to proceed in forma pauperis.

Order overruling Motion and Grounds for new trial.

Dec. 20, 1943—Notice of defts. motion for supersedeas and fixing of bond pending appeal and defts. objection to removal from Jefferson Co. Jail pending appeal and deft. does not

Docket Entries

- Dec. 20, 1943—elect to begin service of sentence—filed.
Served on Eli H. Brown III by Louis Lotze.
- Motion of deft. for staying and suspending execution and for supersedeas, and order fixing bail and discharging deft. from custody pending appeal, filed.
- Order staying and suspending execution—appeal allowed—considered supersedeas.
- Receipt of att. copy by L. E. Cranor, U. S. Marshal.
- Order overruling Motion for Bond—obj. and exc.
- Dec. 21, 1943—Order filing written report of psychiatrists.
- Jan. 6, 1944—Motion & affidavit for extension of time for filing Assignment of Errors & Bill of Exceptions filed.
- Order giving extension to 4:30 p. m. Feb. 19, 1944.
- Motion & affidavit for time to file Record on Appeal & docketing action filed.
- Order extending time to March 10-1944.
- Order filing Designation of Contents of Record on Appeal.
- Jan. 11, 1944—Order directing expense of printing record on appeal to be paid by U. S. when authorized by Atty. Gen. (Title 28—sec. 832 U. S. C.).
- Feb. 12, 1944—Motion for Order transmitting all original exhibits or photostatic copies to U. S. Circ. Court of Appeals 6th Circ, filed.
- Order transmitting original exhibits or photostatic copies entered.
- Feb. 18, 1944—Assignment of errors filed—Order.
Bill of Exceptions approved and filed—Order.
- Feb. 21, 1944—Order received from U. S. Circ. Court of Appeals granting appellant leave to proceed in forma pauperis (Feb. 18-1944).
- Feb. 24, 1944—Order filing exhibits.

CLERK'S CERTIFICATE.

I, W. T. Beckham, Clerk of the United States District Court for the Western District of Kentucky, do hereby certify that the foregoing 1567 pages constitute a true, full and complete transcript of the record of proceedings had in this court in the case of United States of America vs. Thomas Henry Robinson, Jr., Criminal Case No. 18917, as same appears of record and on file in my said office and as provided in the Designation of Record on Appeal, filed herein on January 6, 1944.

Witness my hand and seal of this court this _____ day of March, 1944.

(Seal)

W. T. Beckham,
Clerk, United States District Court,
Western District of Kentucky.

[fol. 1569] IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED—June 5, 1944

(Before Hicks, Allen and Martin, JJ.)

This cause is argued by Robert E. Hogan for Appellant and by Eli H. Brown, III, for Appellee and is submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Entered July 31, 1944

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

{fols. 1570-1571} OPINION—Filed July 31, 1944

No. 9754

**UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT**

THOMAS HENRY ROBINSON, JR.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL from the
United States Dis-
trict Court for the
Western District
of Kentucky.

Decided July 31, 1944.

Before HICKS, ALLEN and MARTIN, Circuit Judges.

HICKS, Circuit Judge. On October 20, 1934, a grand jury returned an indictment, containing two counts, against appellant, his wife and father, charging them with kidnaping Mrs. Alice Stoll on October 10, 1934, in violation of Sec. 408a of Title 18 U. S. C., and with a conspiracy to kidnap Mrs. Stoll. Sec. 408c Title 18 U. S. C. While appellant was at large his codefendants were tried and acquitted on both counts.

Appellant was apprehended by the FBI in Glendale, Calif., on May 11, 1936, waived removal proceedings, was brought by airplane to Louisville, Kentucky, where the alleged kidnaping occurred, and on May 13, 1936, was arraigned in the United States District Court for the Western District of Kentucky on the kidnaping count only, plead guilty and the court sentenced him to imprisonment for life. He was incarcerated in the Federal Penitentiary at Atlanta, was later transferred to the Federal Penitentiary at Leavenworth, and from there he was transferred to the Federal Penitentiary on Alcatraz Island, California.

In 1940, while appellant was serving his sentence in Alcatraz, he applied to the District Court for the Northern District of California for a writ of habeas corpus,

which was denied. He appealed to the Circuit Court of Appeals, where the order of the lower court was affirmed. See *Robinson v. Johnston, Warden*, 118 Fed. (2d) 998 (C. C. A. 9). The Supreme Court granted certiorari and remanded the case to the Circuit Court of Appeals for further proceedings. See *United States ex rel. Robinson v. Johnston, Warden*, 316 U. S. 649. Thereupon that court reversed the order of the District Court and remanded the case with directions to issue the writ of habeas corpus and proceed to a hearing upon the merits. *Robinson v. Johnston, Warden*, 130 Fed. (2d) 202 (C. C. A. 9). After a hearing the District Court found that appellant did not intelligently waive counsel when he plead guilty in the District Court for the Western District of Kentucky, and therefore that that court was without jurisdiction, and that the judgment and sentence of life imprisonment were illegal and void. The California District Court followed *Johnson v. Zerbst, Warden*, 304 U. S. 458, 468, and granted the writ of habeas corpus [*Robinson v. Johnston, Warden*, 50 Fed. Supp. 774 (D. C.)] but directed that appellant be returned to the Kentucky District Court for further proceedings upon the indictment.

Pursuant to that order, appellant was returned to Louisville, was brought into court, where counsel of his own choosing was appointed for him, and upon his formal arraignment upon the kidnaping count of the indictment, he plead not guilty. Upon his trial he was convicted and the death penalty imposed. Hence this appeal.

Among the errors assigned, appellant complains that the District Court should have declared Section 408a of Title 18 U. S. C. [the Lindbergh Act] to be unconstitutional; that it should have sustained his demurrer to the indictment on the ground that it was too indefinite and uncertain; that appellant was subjected to double jeopardy; that he was denied the benefit of statutory removal proceedings; that there was error in the selection of the jury; that his motion for a directed verdict should have been sustained; that the court erred in admitting certain testimony and exhibits; that it erred in the instructions to the jury and in denying certain requests for instructions; that the court's manner in charging the jury was prejudicial; that he was convicted and sentenced for what he testified of and concerning Mrs. Stoll; that the District Attorney and his Assistant made prejudicial remarks to the jury in argument; that the court erred in refusing to permit Mrs. Ann Woollet to be

impeached; and finally, that his motion for a new trial should have been sustained.

We examine first appellant's complaint, made for the first time in the assignments of error, that the order of the California District Court, directing him to be returned to the Kentucky District Court, was in contravention of the provisions of the Removal Statute, Sec. 591 of Title 18 U. S. C. The contention fails for two reasons; (1) it comes too late; and (2) it is immaterial. The presence of appellant in the Kentucky District Court gave it complete jurisdiction over his person, regardless of how his presence was secured. See *Albrecht v. United States*, 273 U. S. 1, 10; *Stamphill v. Johnston*, 136 Fed. (2d) 291, 292 (C. C. A. 9).

Appellant contends that Sec. 408(a), Title 18 U. S. C., is unconstitutional in that it violates both the Fifth and Sixth Amendments. The Section follows:

"Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction be punished (1) by death if the verdict of the jury shall so recommend, *provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed*, or (2) if the death penalty shall not apply ~~nor~~ be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine. . . ."

We have underscored that portion which allegedly contravenes the indicated amendments. The criticism of these provisions is that they are too vague, uncertain and indefinite to form the basis of a valid indictment. The short answer is, that the provisions do not constitute an element or ingredient of the offenses denounced in Sec. 408a. They relate to the punishment and there is nothing in the Constitution which grants the accused the right to be informed of the punishment that may be inflicted upon him by law. The offense is the subject of an indictment, not the punishment. The punishment is the remedy the law provides, and is not, except perhaps in exceptional

cases, to be set forth in the indictment. See *Bishop on Criminal Law*, 3rd ed., Vol. I, Sec. 204.

Appellant filed a demurrer to the indictment which is in most general terms, but since the case involves the death penalty, we regard it our duty to consider in detail the specific criticisms of the indictment as set forth in brief and argument.

It is contended that the kidnaping count did not allege, that Mrs. Stoll was not liberated from appellant's custody unharmed. This count not only charged the statutory elements of the offense, to wit, that the defendants named therein kidnaped Mrs. Stoll and transported her in interstate commerce and held her for ransom, but it went further and alleged, that while she was in their custody they did "beat, injure, bruise and harm and aid and abet each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll and did not liberate her unharmed." It is manifest, therefore, that the demurrer, as to this feature, is a "speaking demurrer" and is bad.

But appellant goes further and alleges, that the phrase "and did not liberate her unharmed" was too indefinite as a basis for the indictment; that the word "harmed" admits of varying degrees of meaning from slight to grave, and that appellant was entitled to be advised by the indictment as to what particular injuries the Government would insist had been inflicted upon Mrs. Stoll at or before the time she was liberated. We again point out that the phrase "and did not liberate her unharmed" did not state an essential part of the offense charged. Appellant might have been convicted without any showing that Mrs. Stoll was liberated at all; or, if she was, whether she was set free either sound or unsound, in mind or body. The punishment provided by the statute varied from imprisonment from one year to life, in the discretion of the court, or to a death sentence "if the verdict of the jury should so recommend," and in determining whether it would recommend capital punishment, the jury was entitled to know from the evidence to what extent aggravation was involved. It was for this reason, no doubt, that the phrase "provided that the sentence of death shall not be imposed by the court, if prior to its imposition the kidnaped person has been liberated unharmed" was incorporated in both the statute and the indictment. It furnishes a basis for proof as to what extent the offense was aggravated. See *Seadlund v. United States*, 97 Fed. (2d) 742, 748 (C. C. A. 7). In the light of the purpose intended, there is no merit in the contention that the language "liberated unharmed" is

too indefinite and uncertain. This language carried no ambiguous meaning. If we should assume ambiguity, it is completely negated by the averments that Mrs. Stoll was beaten, bruised and injured. It follows logically that there is no merit in Assignment #16 that the court erred in admitting the testimony of various witnesses as to Mrs. Stoll's physical condition when she was released.

Appellant complains that he has been placed in double jeopardy, in contravention of the Fifth Amendment. This contention cannot be sustained for two reasons: (1) because, as hereinabove indicated, it has been judicially determined that the original judgment and sentence by the Kentucky District Court were not a judgment and sentence at all; and (2) because the original judgment and sentence having been declared void at his insistence, appellant may not later introduce it as a hindrance to the further administration of justice. *Bryant v. United States*, 214 Fed. 51, 53 (C. C. A. 8); *King v. United States*, 98 Fed. (2d) 291, 295 (C. A.-D. C.). As pointed out in the Bryant case, it is not material that appellant attacked the original judgment and sentence collaterally by habeas corpus instead of directly by appeal.

After the jury was impanelled, but before it was sworn, it appeared that the trial was likely to be protracted and the court ordered that two additional jurors be selected as alternates, under the provisions of Sec. 417a of Title 28 U. S. C. By agreement, one juror only, C. E. Miller, was selected as an alternate and was seated adjacent to the jury box. Before the jury and the alternate were sworn, appellant's counsel objected to the alternate but withdrew the objection upon his attention being called to the fact that he had agreed to take no such exception. The jury and the alternate were sworn and the trial proceeded. During its progress, Mrs. Davidson, a juror, became ill and unable to continue. She was discharged and Mr. Miller, the alternate, without objection, took her place in the box. Appellant, in the assignment of errors, for the first time insisted that Miller's participation as a juror was unlawful because the statute, under which he was selected, was an invasion of appellant's constitutional right to trial by a jury of twelve, as provided by the Sixth Amendment, and by Article II, Sec. 2, Cl. 3 of the Constitution.

We find no merit in appellant's contention, first, because it appears that he was tried by an impartial jury of twelve. Miller was a competent juror, was unchallenged upon any ground of personal disqualification, sat next to the jury box until he was substituted as a regular

juror, and then took his place as such. He saw and heard all the proceedings of the trial and was segregated with the other jurors, and there is nothing to indicate that his participation in the deliberations of the jury was prejudicial. He obeyed the orders and admonitions of the court, just as did the other jurors. This is the first attack upon the constitutionality of the Act in question and we find no reason to think that it is unconstitutional. It is a forward looking statute and a needed reform in procedure. A similar statute has been upheld by the Supreme Court of North Carolina in *State v. Dalton*, 206 N. C. 507.

Second, appellant undoubtedly waived his right to trial by the jury originally impanelled and consented to the substitution of the alternate and there is no constitutional inhibition against such waiver. In *Patton v. United States*, 281 U. S. 276, the question certified was as follows:

"The Court below, being in doubt as to the law applicable to the situation thus presented, and desiring the instructions of this court, has certified the following question:

"After the commencement of a trial in a Federal Court before a jury of twelve men upon an indictment charging a crime, punishment for which may involve a penitentiary sentence, if one juror becomes incapacitated and unable to further proceed with his work as a juror, can defendant or defendants and the Government through its official representative in charge of the case consent to the trial proceeding to a finality with eleven jurors, and can defendant or defendants thus waive the right to a trial and verdict by a constitutional jury of twelve men?"

This question was answered in the affirmative. If a defendant can validly consent to a trial by eleven jurors, when the twelfth becomes incapacitated, we can perceive no valid objection, if he should consent to a trial by twelve jurors, one of whom was an alternate impanelled in accordance with the statute. See also *Adams v. United States ex rel. McCann*, 317 U. S. 269.

Appellant claims that the court erroneously denied him the right to challenge for cause the following proposed jurors, to wit, Allen, Ballard, Sutcliff, Van Cleave and Eastes, and that he was compelled to use five of his statutory challenges upon these jurors. It was the duty of the court [Title 28, Sec. 424 U. S. C.] to determine appellant's right to challenge for cause. Our duty is limited

to the question whether there was manifest error in denying the challenges. *Reynolds v. United States*, 98 U. S. 145, 156. We cannot within reasonable limits review the evidence upon these questions. In the case of juror Allen, it related to his business connections with the Government. In the case of the other four, it touched upon reported relationships to and contacts with Mrs. Stoll and her family.

We conclude that there was no abuse of judicial discretion in denying the challenges. It is not manifest, as a matter of law, that they should have been sustained. Moreover, we do not think that their denial resulted prejudicially for the jury selected was so far as we can determine, fair, and impartial. See *Simpson v. United States*, 184 Fed. 817 (C. C. A. 8) and cases there cited.

Appellant challenges the denial of his motion for a directed verdict. Under his plea of not guilty he relied upon the defense that he was insane prior to, at the time and subsequent to, the alleged offense. There is therefore involved, not only the question whether there was substantial evidence that he kidnaped Mrs. Stoll, transported her in interstate commerce and held her for ransom, but, if so, also the question, whether he was mentally responsible for his acts.

At the trial appellant expressly waived any contention "that he is now insane." That he was not then insane is borne out by the report of a committee of four psychiatrists, who examined appellant by direction of the court. This report, dated October 11, 1943, concluded, "The diagnosis in this case is, 'without psychosis.' This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible."

Appellant was born in 1907 of indulgent and well-to-do parents at Nashville, Tenn., and was reared and educated there. He had the usual run of children's diseases, plus an aggravated attack of malaria when he was fourteen. This was followed by tuberculosis for which he was hospitalized at the age of fifteen for approximately a year. Following his release his mother gave him a Buick coupe. He went to the Ross and Wallace Schools and then to Vanderbilt Law School, where he studied for two and a half years, making excellent grades and lacking only two or three subjects of completing the course. While at Vanderbilt he moved in good society, was a member of two fraternities, and participated actively in school functions.

He testified that when he was twenty years old, he was forced to marry a "casual pick-up," with whom he had been sexually intimate over a period of less than seven months, and that shortly after the marriage she gave birth to a nine months' baby. Some time later he obtained a divorce on the ground that the marriage had been procured by fraud, but he testified that the incidental embarrassment and scandal disturbed him; that he withdrew into himself, severed his social contacts and eventually quit the law school.

Appellant testified that after leaving Vanderbilt he worked four or five months for a lumber company and was discharged for neglect of duty. He married a second time, January 9, 1929, and a child was born on August 31st of the same year. In March 1929 he entered two homes in Nashville on the pretense of being a deputy sheriff and stole jewelry worth several thousand dollars, and in one instance, drove away in the owner's car. He borrowed money on these jewels at a Nashville bank. In May 1929 he was indicted for these offenses. He plead "present insanity" and upon a finding by a jury that he was insane at that time, he was committed to the Central State Hospital for the Insane where he remained about a year. The indictments were dismissed in May 1930, but appellant's father brought lunacy proceedings against him in the County Court of Davidson County, where upon a finding by a jury that appellant was of unsound mind, he was again committed to the Central State Hospital and afterwards transferred to the Western State Hospital at Bolivar, where he could get more fresh air, sunshine and exercise, and he remained there until August 1930, when his father, who had been appointed his Guardian, insisted upon removing him, and assumed full responsibility for his welfare.

Dr. Cocke, Medical Superintendent at the Western Hospital, testified that the Examiners at the Central Hospital diagnosed appellant's case as dementia praecox, but that his own staff diagnosed him as a psychiatric personality, which meant that he was not insane but incapable of meeting the demands of his environment. Dr. Cocke testified that since appellant was not insane, he could not legally hold him in the hospital, although he was of the opinion that it was best for him to stay there; that he was dissatisfied, would not come under discipline, and was difficult to control; that he would violate regulations, was unstable and incapable of going out into the world and assuming the responsibilities of life. In a letter to the State Commissioner of Institutions on Sep-

tember 4, 1930, Dr. Cocke wrote of appellant, "He knows right from wrong as any normal person would but he is just one of those types that cannot resist the temptation of doing wrong and committing crimes. I insisted on Mr. Robinson keeping the boy here but he thought otherwise. It seems that they" (referring to the parents) "won't stand for the boy to be disciplined and without discipline or institutionalization the boy will never make the grade."

Following his release, appellant and his family spent some time at his parents' home, where it is in evidence that he struck his mother, threatened to kill his father, and showed great jealousy of his wife. He found the stigma of insanity worse than the disgrace of a forced marriage. He testified that he quit going to church because he felt the preachers were preaching directly at him; that in the hospital he felt the doctors were against him; that he felt he was the reincarnation of Patrick Henry and should have a high place in national affairs. He had difficulty in getting a job. He worked for the Servel Company for one day in May 1931, and left because he was dissatisfied. Through family connections he got a job at a filling station with the Stoll Oil Company in Louisville, and held it from June 1, to July 10, 1931, when he quit to become a collector for an insurance company for two months. For almost two months in 1932, he solicited for a business school in Nashville and then went to Winnetka, Ill., for a few months to sell oil burners. From January to April, 1933, he was maintenance man at an apartment in South Bend, Ind. In 1934, he was employed at the DuPont plant in Nashville and was temporarily discharged in May because in his application for bond he failed to disclose his insanity record.

Appellant testified that shortly thereafter he left Nashville and he was faced by two girls with what he called false charges of robbery at a night club. He denied that he told the Attorney General that if those girls testified against him he would "spear them all over the papers of Nashville." However, on cross-examination the Attorney General, a witness for appellant, testified that appellant said he was not fearful of prosecution because he would testify that they had sexual relationship with him and he would ruin their reputation.

Appellant claims that in 1934 he again sought employment from C. C. Stoll, or the Stoll Oil Company, in Louisville, but was told that it was the policy of the Company not to rehire persons who had quit. He claims that he got

the idea, when he was trying to get employment in Chicago, that Mr. Stoll was giving him a bad reputation and was preventing him from getting a job. He claims to have brooded over this and felt that Mr. Stoll was a powerful capitalist and a menace to the country and responsible for the depression.

However, appellant did obtain employment as night janitor in a building in Oak Park, Chicago, from June to August 18th. This was his last job. Upon leaving there he and his wife moved to Magnolia Avenue in Chicago and took up life under an assumed name. Four weeks later he rented a car from the Saunders U-Driv-It Company to move to the south side of Chicago but instead of stopping there he and his wife drove to Indianapolis and in the first week of September he rented an apartment under the name of Thomas W. Kennedy at 2735 North Meridian Street, which was used as the hide-out for the alleged kidnaping which followed.

This, then, is the confused and desultory pattern of appellant's life prior to the offense with which he is charged.

Appellant claims that while in Indianapolis he tried to secure employment and that his failure to do so accentuated his feeling toward C. C. Stoll and that he prepared a ransom note with the idea of kidnaping him. He purchased a pistol and early in October, still using the U-Driv-It car, he and his wife drove to Louisville, where on October 8th, he registered at the Tyler Hotel. His wife went on to Nashville by train. On October 9th he gained entry to the home of C. C. Stoll on a pretense of being a telephone repairman and not finding him in, went to the home of George Stoll and entered it under the same guise. George Stoll was not there and appellant gave up the quest and went back to the hotel.

On the next afternoon, appellant went to the Berry Stoll home with the purpose in mind of kidnaping Berry Stoll, the husband of Mrs. Alice Stoll, and the son of C. C. Stoll. He entered the home by the same ruse and questioned Mrs. Ann Woollet, the maid, about the members of the household. He thus discovered that there was no chauffeur and that a colored workman had left. Mrs. Woollet testified that he went to the garage and seemingly checked the wires there, then asked about the extension on the second floor and asked the maid to come to that floor to help him check it. His actions were not suspicious since the Stolls had been having trouble with their telephone. Mrs. Stoll nursing a cold, was dressed but wearing a kimono, and was in her bedroom where the phone

was located. When Mrs. Woollet advised her that the repairman wanted to check it, she moved to the guest room. The maid testified that soon after she entered the bedroom where appellant was, he dropped his screw driver, put a gun to her back and told her to go to the room where Mrs. Stoll was.

There is a sharp conflict in the evidence as to what happened in the guest room. Appellant testified that he had become acquainted with Mrs. Stoll in 1931 when he worked at the Stoll filing station, because she frequently parked her car there; that a flirtation ensued and that on four different occasions they engaged in sexual intercourse, once on a secluded lane leading to the Rose Island Ferry, twice at the Beech Grove Tourist Camp on the Dixie Highway, where they registered as man and wife, and once in Indiana, on the outskirts of Jeffersonville, near the Log Cabin roadhouse, where they registered as man and wife and took one of the cottages in the rear. The record reveals that appellant and Mrs. Stoll could not have registered at the Beech Grove Tourist Camp at the times testified to by appellant for the compelling reason that it did not then exist as a tourist camp.

He testified that when he went into the guest room Mrs. Stoll smiled and said, "What are you doing here?" and that he replied, "I have come to kidnap Berry Stoll." His testimony is that they talked for an hour and that she told him he could not get away with it; that she offered him a check, which he refused; that she was afraid for her husband to find him in the house and suggested that she go herself and that she would help him get the money if he would give her half of it. He denied that he threatened either Mrs. Stoll or Mrs. Woollet, with a pistol, but testified that he had left the pistol in the glove compartment of the car. He testified that he had tied Mrs. Stoll's hands loosely with wire but that when she decided to go, she took the wire off her wrists and got her coat; that they went down the stairs together and that she got in the back of the car and kneeled down because she was afraid that they would meet her husband on the road.

Mrs. Stoll, who from the witness stand identified appellant as the kidnaper, testified that when the maid opened the door to the guest room appellant followed, holding a gun at her back. She said, "What are you doing in here?" and he replied that he had come to kidnap her. She testified that she tried to dissuade him by telling him that her father, Wm. Speed, had had bank losses and was not wealthy, but that her arguments were of no

avail. She testified that when appellant laid his gun on the bed for a minute, intending to tie her hands, she made a grab for it and that he hit her on the forehead with an iron pipe, causing a fracture. She continued to resist and made a move to go to her bedroom for a gun and he hit her again over the right ear so hard that she fell over on the bed, dazed and bleeding.

Mrs. Stoll testified that while he held the gun on both of them, he ordered the maid to bind her (Mrs. Stoll's) wrists with wire. The maid was then bound hand and foot with wire and Mrs. Stoll testified that before leaving the guest room appellant put adhesive tape over her mouth so that she couldn't open it; that she was allowed to get her coat and was ordered to the car, appellant walking behind her with the gun. Her testimony was that when she got to the car she was ordered to lie down on the floor in front of the back seat; that her feet were bound and she was covered with a blanket and newspapers. She further testified that after appellant threatened to kill her husband if he arrived while appellant was still there, she didn't resist any further and became anxious to get away before he came home.

Mrs. Woollet's direct testimony as to what took place in the guest room was substantially similar to that of Mrs. Stoll. She added that the pipe with which appellant struck Mrs. Stoll was wrapped in paper and the pipe itself was introduced as a physical exhibit. She testified that appellant had brought the wire and the adhesive tape with him, and after she had unbound her ankles, she went to the telephone and found that it had been disconnected.

On cross-examination Mrs. Stoll denied emphatically that she had known appellant when he was employed at the Stoll filling station; that he had ever serviced her car, or that she had ever seen or talked to him before the day of the kidnaping.

It thus appears that the testimony of appellant on the one hand and of Mrs. Stoll and Mrs. Woollet on the other is contradictory, but contradictory evidence is not to be considered in determining the motion for a directed verdict. *Gunning v. Cooley*, 281 U. S. 90, 94; *Rockford v. Penna. Co.*, 174 Fed. 81, 83 (C. C. A. 6); *Minneapolis, etc. Ry. Co. v. Jos. Galvin*, 54 Fed. (2d) 202 (C. C. A. 6).

Several witnesses testified as to conditions in the room after the alleged abduction. There were blood stains on the pink coverlet of the bed, one the size of a large plate and the other as large as an ordinary saucer, and there were splotches of blood around the edges of the stains.

As to the ransom note: Mrs. Stoll testified that appellant did not display any ransom note in her presence nor any envelope in which it might be contained. Mrs. Woollet testified that when appellant left the guest room with Mrs. Stoll "he threw the ransom note on the bed and said 'you give this to Berry Stoll,' " but that she never touched it.

Berry Stoll testified that when he reached home, apparently about fifteen minutes after appellant and Mrs. Stoll had left, he ran in, saw the condition of the room, the large splotches of blood on the bed, the ransom note and a pipe wrapped in paper on the floor. Appellant's own testimony touching the ransom note was that while he was still in Indianapolis he had prepared a ransom note with the idea of abducting C. C. Stoll and that the note was made out in the name of C. C. Stoll; that when Mrs. Stoll suggested that he take her rather than her husband, and divide the ransom money, he told her the note was made out for only \$30,000.00 and that if she were to get half he would have to raise the amount on the ransom note; that he took the note out of his pocket and changed the amount from \$30,000.00 to \$50,000.00 in pencil and marked across it in pencil, "For Mrs. Stoll." He said that when he went over to tie the maid's feet the note fell out of his pocket.

Appellant's description of the changes on the ransom note fits like a glove the ransom note that was recovered in the Berry Stoll house. The note was typewritten and was made out in C. C. Stoll's name, with ransom fixed at \$30,000.00. On the envelope in very crude lettering in pencil appeared the notation "\$50,000 for Mrs. Stoll," and to the typed designation, "TO THE MEMBERS OF THE STOLL FAMILY" was added, "and Mr. Speed." Mr. Speed was Mrs. Stoll's father. At the top of the first sheet of the ransom note was crudely added by pen, "Intended for C. C. Stoll at first" and Mr. Speed's name was added in pencil to the salutation. On the second page at the top was added crudely in ink "Same for Mrs. Stoll except amount" and the designation "\$30,000 (thirty thousand dollars) was stricken and the figures and words "\$50,000 (fifty)" written above. The typed part of the note indicated that Mr. Stoll was to fill in blanks designating an intermediary in Nashville, Tenn. However, the instruction "(to be filled in by Mr. Stoll)" was scratched and the blank filled in in ink with the name of "T. H. Robinson 1716 Ashwood Ave." On account of its length we do not reproduce this ransom note. It is enough to say that it discloses a scheme, thorough in conception,

and that the writer was "fully aware" of the Lindbergh Act.

Mrs. Stoll testified that after leaving the house they must have driven for two and a half hours or more, when appellant told her they were in Indianapolis; that he stopped at a dark garage, locked her in the car and told her that he was going to see if the coast was clear and that if she made any attempt to scream or attract attention, he would "bump her off;" that she remained bound and gagged in the locked car; that appellant reported that the coast was not clear; that they drove to a deserted part of town, where appellant unbound her and ordered her to sit with him in the front seat; that he then untaped her mouth and she requested him to unbind her wrists, which were giving her a great deal of pain; that her head was still bleeding and that as soon as her mouth was untaped she asked him why he had kidnaped her and he replied, "For the money."

Appellant on the other hand testified that soon after they had passed Berry Stoll's car, which they had met while they were still in or near Louisville, Mrs. Stoll got out of the car and sat on the front seat with him, and that she was not bound or gagged but was free to talk and did talk. Appellant and Mrs. Stoll both testified that when they left the car she walked into the apartment (heretofore described as located at 2735 North Meridian Street.) Mrs. Stoll testified that they entered by the kitchen, which was dark; that she cooked some eggs, which they ate, and that she immediately became nauseated; that her head pained her and she was very weak and ill; that at her request appellant put mercurochrome on her head; that he refused to permit her to sleep on the divan in the living room; that the bedroom had twin beds and when they retired appellant bound her hands to the springs on either side so that she could not shift her position; that he slept in the other bed and tied a cord from her wrist to his so that if she moved he would know. She was not molested. She testified that the shades were down the whole time she was in the apartment, which was all of five days and parts of two others; that when he left the apartment to buy food, make telephone calls or for any other reason, he would put a chair in a closet, tie her to the chair, gag her, put adhesive over her lips and lock the door, that she was left in the closet several times a day and was never left in the room alone; that when she went to the bathroom she was permitted to close the door but not to lock it, and that he sat in the living room opposite the bathroom door with a pistol in his hand.

Appellant admitted that they were in the apartment for seven days and testified that during the first few days they ate, drank beer, listened to the radio, read newspapers and had discussions; that when he went out she was never bound or gagged until the last two days; that for the first three or four days she didn't appear anxious to get away, that she was calm and took it easy, "took it as a big joke," but that about the fifth or sixth day, possibly because of the publicity the case was getting and the news flashes on the radio, she realized the seriousness of the situation and threatened to walk out.

Mrs. Stoll testified that appellant got impatient at the delay in obtaining the ransom and said that her family was double-crossing him and that she wrote three letters at his direction over the week-end. Appellant denied that he ordered her to write these letters, which were in Mrs. Stoll's handwriting. One, written on Saturday, bore the salutation, "Dear Mr. Intermediary" and enclosed Mrs. Stoll's wedding ring and was apparently sent to verify change in plans, since it accompanied a typewritten letter concluding "Kidnaper" and addressed to Robinson, Sr., the intermediary named in the ransom note, telling him to pay over the money to his daughter-in-law (appellant's wife) who would receive her instructions secretly.

A second letter, written on Sunday, was to Miss McHenry, who was addressed by a nickname known to both. It confirmed a phone call that appellant had made to her and stated that the daughter-in-law was to deliver the money. It warned that police must be called off or the kidnaper would carry out his threat.

The third letter, written to Berry Stoll on Sunday, stated that she was unharmed except for a small cut and called attention to the change in the person designated to deliver the money and that she must not be followed or interfered with and that it was the last chance for Mrs. Stoll to be delivered alive.

Appellant apparently kept in touch with the intermediary by telephone. Mrs. Stoll testified that he told her that he had made phone calls to the intermediary and to his wife. Miss McHenry received a phone call.

Meanwhile, the Stoll and Speed families got \$50,000.00 together in five, ten and twenty dollar bills. The serial numbers were recorded and the money sent by express under FBI guard to Nashville, where Thomas H. Robinson, Sr., the designated intermediary, lived. The package was delivered to Robinson, Sr. in the office of a Nashville attorney on Monday, October 15th, about 12:30 P.M.

The money was delivered to appellant next morning. Mrs. Stoll testified that on Tuesday, October 16th, while she was still tied in bed, she heard a knock at the door and called appellant's attention to it. He opened the door and his wife, Frances Robinson, entered, carrying a bundle with the ransom money in it, which she threw on the bed. Mrs. Stoll testified that Mrs. Robinson urged appellant to hurry and get away as the police were following her; that he urged her to go with him but she declined to go.

Mrs. Stoll testified that she was again tied and locked in the closet; that appellant went out and returned in about half an hour and again urged his wife to go with him; that he again left about 11:00 A.M. and soon thereafter Mrs. Robinson untied her and they ate; that at 2:00 P.M. they left the apartment together, walked a block and took a taxi to the home of a Rev. Clegg, whom Mrs. Stoll learned by radio was her husband's cousin; that while there she notified Miss McHenry by phone that she had been released; that the Cleggs started to drive her to Louisville but that the car was overtaken near Jeffersonville by Department of Justice Agents, who took her home.

There is no evidence except that of appellant, that Mrs. Stoll received half or any part of the ransom money. There is substantial testimony, including that of Mrs. Stoll, to the contrary. It appears that Mrs. Stoll's family had provided Mrs. Robinson some money for travelling expenses and that this amount, \$470.00, was returned by the Robinsons through Mrs. Stoll to her husband, Berry Stoll.

We do not undertake to trace appellant's movements after the release of Mrs. Stoll until his arrest, except in a most general way. He admitted that he crossed the continent two or three times; that he stayed at the Waldorf Astoria, the Ritz Carlton, the St. George and the New Yorker, hotels in New York; and the Ambassador and the Biltmore in Los Angeles. He spent and gave away money lavishly, some of it to his mother, who visited him in St. Louis, some to his father, some for the expenses of a travelling companion, some for automobiles, etc., etc. To use his own expression, "Oh, I don't know—that money I threw it away right and left." Something like \$5000.00 was taken from his person when he was arrested.

In addition to the testimony hereinabove disclosed, bearing on the issue of insanity, a mass of expert psychiatric testimony was introduced by both sides.

Dr. Bracken testified that he didn't think appellant had any control over his will. Dr. Solomon was of the opinion that he had no ability to distinguish right from wrong or to resist his impulses. Dr. Crice was of the opinion that appellant was suffering from an insane delusion which had destroyed his ability to distinguish right from wrong.

On the other hand, Dr. Singleton, who was psychiatrist at the penitentiary at Leavenworth, testified that appellant was capable of distinguishing between right and wrong and realized fully the consequences of any deliberate act. Dr. Richey, Chief Medical Officer at the Alcatraz penitentiary, testified to the same effect, on the basis of records of physical and mental examinations made of appellant there, at Atlanta and Leavenworth.

In response to a hypothetical question, Doctors Gardner, Kimbell, Landis and Ackerly, all eminent psychiatrists, stated that appellant was capable of distinguishing between right and wrong and realized the consequences of his own deliberate acts. Even appellant himself in the letter to Bates, written in 1936 and hereinafter referred to, said of himself, "For your information, I would like to state this, that I am not a mental case, I have no psychosis, and that former decree of insanity was the result of my father imposing on his friendships. . . ."

After a careful review of the entire record, we conclude that there was substantial evidence to support the verdict of the jury, and that the motion for peremptory instructions was properly denied.

Appellant urgently insists that the jury's recommendation of the death penalty was unjustified because there was no evidence that Mrs. Stoll was not liberated unharmed, or to state it more clearly, because there was no evidence that she was liberated harmed. The proposition has little or no weight.

We have already viewed the testimony of Mrs. Stoll and Mrs. Woollet upon this matter and have noted the testimony of several witnesses that there were two large blood stains on the coverlet of the bed in the room where Mrs. Stoll was seized. Mrs. Woollet testified that when Mrs. Stoll "made a grab for the gun" appellant struck her over the head with "a lead pipe. I suppose it was lead, it was a heavy pipe anyway. It was a pipe wrapped in paper." He then "hit her over the head again with that pipe and then she fell back on the bed. He hurt her pretty badly—I thought she was unconscious for a bit . . . it brought blood."

Berry Stoll testified that when his wife was returned, "She was in a horrible shape, her lips were drawn and

bleeding from where the adhesive tape had been, and raw. There was horrible blood all over her forehead. Her head was covered with blood and she was completely unnerved and completely shattered."

Mrs. Douglas Potter (Miss McHenry) who saw Mrs. Stoll either the first or second day after her return, testified: "She was in a highly nervous state, she had a bump on her forehead . . . and she had a cut in her hair, and she was very nervous, couldn't keep her mind on anything, was walking up and down, was very sensitive to any voice or any one coming up the driveway . . . Her mouth, the skin was all raw around the outside of her mouth, and also on her wrists, her skin was raw."

Dr. Frazier, who attended Mrs. Stoll about 9:00 P.M. on the day of her release, testified that she "was utterly worn out, she was pale, bedraggled, had circles under her eyes, she had sores on her lips with some remnant of the dirt adhesive plaster will leave at its margins . . . though outwardly calm, she was under terrific nervous tension . . . she had a rounded swelling on her right temple which was an inch and a half in diameter. It began under her hair line and covered pretty much the entire temple. This place was not discolored as the usual bruise is, but was quite tender to touch and quite hard, and I felt that it represented bleeding under the skin that covers the bone, the periosteum, and the mere fact that it did not discolor and was so long absorbing, going down, made me believe that perhaps there the actual integrity of the bone had been interrupted. The other injury was on the back of her head a little above and behind the ear, and that was covered up by a clot of blood which had matted the hair also . . . it was the sort of cut that should have had at least two stitches taken in it . . . but fortunately the wound had not gaped and healing was in process." He saw her on the following day and testified that her blood pressure had gone down but that she was completely exhausted. The lump on her head "had not been entirely absorbed at the end of the week, but it had diminished in size by more than half and was less tender. . . ."

The evidence that appellant seriously injured Mrs. Stoll at the time of her abduction and that she was suffering from these injuries at the time of her release was not only relevant, but was precise, substantial and highly cumulative.

It is argued that the jury would not have recommended the death penalty if appellant had not, in support of his contention that Mrs. Stoll went with him willingly, testified that he had had sexual relations with her. The dif-

difficulty with this contention is that it has no evidence to support it. It arises out of a statement by the court in imposing the sentence. The court said: "It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believed if that contention had not been made, this jury would never have recommended the death penalty." But this comment of the court, standing alone, is not sufficient to set aside the verdict. Had the jurors themselves advanced the same reason for the imposition of the death penalty as did the Judge, they would not have been heard thus to impeach their verdict. *Hyde v. United States*, 225 U. S. 347, 384; *McDonald v. Pless*, 238 U. S. 264, 267.

Error is alleged upon the admission of evidence tending to show the commission of prior offenses by appellant. We do not discuss this matter in detail. This type of evidence, which to some extent was adduced by appellant himself, centered around the issue of insanity. It was relevant for whatever it was worth to the jury in assisting it to determine that issue and the court limited it to that purpose. There was no prejudicial error in its admission. See *Arwood v. United States*, 134 Fed. (2d) 1007, 1012 (C. C. A. 6).

Appellant contends that the court erroneously declined to permit him to impeach the witness Mrs. Woollet by showing that she had executed a contradictory affidavit and by showing further by witnesses Powell, Joseph Hayse and Nellie Hayse that she had made contradictory statements out of court concerning matters about which she testified.

First, as to Powell: It was not error to sustain the objection to his testimony because appellant wholly failed to observe the general rule, that to contradict the witness by evidence of what she had said out of court to other persons on the same subject contradictory to what she afterwards testified in court, it is essential that she should first be asked whether she made such statements at a fixed time and place, to certain persons, and that the words used or their substance be stated to her to refresh her memory and to enable her to reply intelligently.

Second, as to Joseph and Nellie Hayse: Appellant sought to prove by these witnesses that Mrs. Woollet had previously made statements and executed an affidavit that contradicted her testimony. The question arose as to whether the testimony of these witnesses would disclose confidential communications between attorney and

client. This is a question to be determined always by the judge. *Peoples Bank v. Brown*, 112 Fed. 652, 654 (C. C. A. 3). The Judge heard the matter out of hearing of the jury and declined to admit the offered evidence. Without going into great detail, we find a preponderance of that evidence to be that the witness, Mrs. Woollet and her husband, Fowler Woollet, after the alleged kidnaping, conceived the idea that they might have a cause of action against the Stolls and Mrs. Speed, the mother of Mrs. Stoll, for some character of mistreatment, real or imaginary, in connection with the event; that Fowler Woollet consulted Joseph Hayse, the witness, who was a lawyer, and later brought his wife to Hayse's office; that they consulted Hayse with reference to their claim and that in that connection Mrs. Woollet made a detailed statement of facts connected with the alleged kidnaping; that later this statement was in substance repeated to him at his home and reduced to writing by a notary public (who assisted Hayse and subsequently married him), and was signed and sworn to by Mrs. Woollet. The Woollets claimed that these statements and the affidavit were confidential and we do not think error was committed in their exclusion. No citation of authority is needed to support the familiar and long established rule of law that an attorney cannot disclose communications made to him by his client without the client's consent, and Mrs. Woollet has not consented. It is beside the point that Joseph Hayse did not receive a fee or accept a retainer. Moreover, we have examined the affidavit in question and find little therein that would tend to contradict the testimony of Mrs. Woollet upon any material matter.

Appellant asserts that the court erroneously overruled his motion to strike the testimony of Government witnesses Smith and Knowles and the exhibits to which their testimony referred. Smith took fingerprints of appellant following his arrest. These fingerprints were introduced in evidence. Knowles, having more than seventeen years' experience in connection with fingerprinting, compared the fingerprints of appellant with those on the ransom note and its envelope and a large number of exhibits which purported to reveal appellant's fingerprints, and testified that the fingerprints upon the exhibits could have been made by no other person "than Thomas H. Robinson or by any other finger than his right thumb." Appellant's claim is that the name "Thomas H. Robinson" used by Knowles referred to his father, Thomas H. Robinson, Sr., and not to him, Thomas H. Robinson, Jr. The point has no weight. Appellant's father, Thomas H. Robinson,

Sr., was not on trial. He had long since been acquitted, and was dead. An examination of the entire testimony of Knowles clearly indicates that he used the names "Thomas H. Robinson" and "Thomas H. Robinson, Jr." interchangeably as referring to appellant. We have no doubt that both the court and jury so understood.

Charles A. Appel, a handwriting and questioned documents' expert, was a witness for the Government. The Government proposed, by the introduction of his testimony, to establish the genuineness of appellant's handwriting upon the ransom note and other documents by comparison with known specimens of his handwriting. The objection to Appel's testimony was that appellant had not been given notice before trial of the Government's intention to examine this expert. Appellant relies upon Sec. 422.120, Kentucky Revised Statutes (Ky. Stat. Sec. 1649) which requires such notice, but appellant's obstacle is that federal courts are not bound in criminal cases by state practice or statutes. *United States v. Murdock*, 284 U. S. 141, 150; *Cagle v. United States*, 3 Fed. (2d) 746 (C. C. A. 6). Appellant's citation of *Erie Railroad v. Tompkins*, 304 U. S. 64, is not in point. It has not been decided that the holding in *Erie R. R. Co. v. Tompkins* is applicable in a criminal case. Moreover, that case affects rules of decision and not of practice.

Error is assigned upon the admission of two letters written by appellant, one to W. A. Smith of the FBI, dated July 1, 1936, and the other to Sanford Bates, Director of the Federal Bureau of Prisons, dated January 1, 1936. These letters were written while appellant was an inmate of the Federal Penitentiary at Leavenworth, undergoing the sentence imposed upon him on his original plea of guilty. A portion of the Smith letter was introduced for the purpose of having appellant's handwriting in the record and was competent therefor in view of the Government's contention that appellant wrote the ransom note and other documents. Finally, the whole letter was read to the jury, without objection, and appellant admitted that he voluntarily wrote it. The Bates letter was admitted as relevant to the issue of insanity under the plea of not guilty. We do not set out the contents of this letter but content ourselves with saying that it was competent for what it was worth to the jury in determining the question of appellant's sanity or insanity at the time of the occurrence of his alleged offense. The point attempted to be made is that these letters were in the nature of involuntary confessions of guilt and therefore inadmissible for any purpose. This

contention is unsound. The letters were written without the slightest duress or constraint, were wholly voluntary, and we find no reversible error in their admission.

Appellant complains of certain excerpts taken from the opening argument to the jury of the Assistant District Attorney and from the closing argument of the District Attorney. These excerpts are found at pages 130-133 of the record. We regard it as unnecessary to reproduce them. They were unexcepted to.

The general rule is that counsel for the defense cannot remain silent and after verdict seize for the first time on the point that the comments to the jury were improper and prejudicial. See *Crumpton v. United States*, 138 U. S. 361, 364, a case involving the death penalty; and *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 239. That portion of the argument of the Assistant District Attorney was, in substance, nothing more than an explanation to the jury of the effect of their verdict in case it did, or did not, make a recommendation. This was not prejudicial.

In the closing moments of his argument the District Attorney stated, "I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll" that she could probably expect that appellant would give testimony that would reflect upon her character for virtue. He went on to state to the jury the difficulty he had had within the time limited to procure and produce evidence to refute this particular testimony of appellant. These statements, strictly speaking, overstepped the bounds. We have examined them in connection with the entire argument and we regard them as isolated expressions, which could have no prejudicial effect. In *Dunlop v. United States*, 165 U. S. 486, 498, it was said: "If every remark made by counsel outside of the testimony were ground for reversal, comparatively few verdicts would stand, since in the ardor of advocacy and in the excitement of trial, even the most experienced counsel are occasionally carried away by this temptation." See *Stephan v. United States*, 133 Fed. (2d) 37, 98 (C. C. A. 6).

It is urged that the court erred in certain instructions to the jury and in refusing to give certain requested instructions. The requests were presented before the charge was delivered. At its close the court asked, "Any further requests by counsel for either side?" to which counsel for each side replied, "Nothing further, Your Honor."

No exceptions were taken to the charge and under well recognized procedure it is not reviewable. *Chapman & Dewey Lbr. Co. v. Hanks*, 106 Fed. (2d) 482, 485 (C. C. A. 6); *Ill. Cent. R. R. Co. v. Sigler*, 122 Fed. (2d) 279, 284 (C. C. A. 6). But the case involves the death penalty and we have therefore examined the charge and the requests. *Stephan v. United States*, supra. The substance of these requests was that the court instruct the jury that it could not recommend the death penalty if Mrs. Stoll were released unharmed before imposition of sentence, and further, that it could not recommend the death penalty because there was no evidence upon the question whether at the time of the trial she was either injured or uninjured. These requests were not only inapplicable but were not the law. The Act refers to the condition of the kidnaped person at the time of his or her release [*United States v. Parker*, 103 Fed. (2d) 857, 861 (C. C. A. 3)] and not at the time of trial or the imposition of sentence. The court carefully, and we think, correctly, followed the law as interpreted in the *Parker* case.

A general criticism of the charge is that it made unfair comment upon the testimony of some of appellant's witnesses and that in delivering it the court's manner of speech, tone of voice and articulation were prejudicial. We have examined these criticisms and conclude that the charge was fair and impartial.

It is said that the court erred in overruling appellant's motion for a new trial. The court's action upon the motion for a new trial is not reviewable further than to determine whether it went beyond the limits of judicial discretion. The record indicates no such abuse of judicial authority.

After having carefully examined this unusually large record, we conclude that it presents no prejudicial error, and the judgment appealed from is therefore affirmed.

[fol. 1572-1573] PETITION FOR REHEARING—Filed August
17, 1944

No. 9754.

United States Circuit Court of Appeals
FOR THE SIXTH CIRCUIT.

THOMAS HENRY ROBINSON, JR., **Appellant,**

versus

UNITED STATES OF AMERICA, **Appellee.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF KENTUCKY.**

PETITION FOR REHEARING BY APPELLANT.

ROBERT E. HOGAN,

809 Kentucky Home Life Building,
Louisville, Kentucky,

Counsel for Appellant.

August 15, 1944.

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United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 9754.

THOMAS HENRY ROBINSON, JR., - - - - *Appellant,*

v.

UNITED STATES OF AMERICA, - - - - *Appellee.*

PETITION FOR REHEARING BY APPELLANT.

STATEMENT.

May it please the Court:

The appellant believes that the opinion rendered by this Court under date of July 31, 1944, is so inconsistent with the law, and with the facts of this case, that a petition for rehearing properly lies and should be sustained.

I.

**THE INDICTMENT CHARGES AN OFFENSE NOT
WITHIN THE ACT. CRIMINAL STATUTES ARE
ALWAYS STRICTLY CONSTRUED.**

It is well settled in the law that, there being no constructive offenses, the violation of a statute must be plain to warrant punishment. It is also a general rule that criminal statutes are always strictly construed. Nothing is ever taken by intendment.

The opinion by this Court of July 31, 1944, states that the provisions "provided that the sentence of death shall not be imposed by the Court if, prior to its imposition, the kidnaped person has been liberated unharmed" DO NOT CONSTITUTE AN ELEMENT OR INGREDIENT OF THE OFFENSES DENOUNCED IN SECTION 408a. If that be true, and assuming for the sake of argument in this case it is true, it necessarily follows that the concluding portion of the indictment's Second Count, in these words:

"and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed,"

do not constitute an element or ingredient of the offenses denounced in Section 408a, Title 18, United States Code Annotated. Those words found and contained in the concluding part of the indictment in question are such as are usually found in the offense of "Assault and Battery." According to "Words and Phrases—Second Series," an assault is defined to be "An attempt with force and violence to do injury to the person of another." A battery is "The actual infliction of an injury."

Carrying one step further the logic of the opinion that the proviso is not an element or ingredient of the offense, the words of the indictment above quoted, which are descriptive of an assault and battery, DO NOT constitute an element or ingredient of the offenses denounced in Section 408a. They are not in any manner related to the offense. They are related, if at all, to the term "unharmed," an ambiguous and uncertain term, having no well defined or

understood meaning. But, this Court, in its opinion, has said that the proviso, of which unharmed is a part, is not an element or ingredient of the offense. It follows, therefore, that if the proviso or term to which those "assault and battery" words may be said to belong is not an ingredient of the offense, those "assault and battery" words themselves are not an element or ingredient of the offense.

For ready reference, and to show just what the gravamen of the offense is, the pertinent part of Section 408a is here reproduced:

"Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction be punished * * *"

Boiled down, the gravamen of the offense denounced by the section in question is the **TRANSPORTATION** in interstate commerce of one who shall have been unlawfully kidnaped and held for ransom or reward. There is no language or words in the offense portion of that section which even intimate or suggest that an assault and battery or beating, bruising, injuring or harming in any way, directly or indirectly, constitute an element of the offense denounced by the Act. It makes no difference, therefore, how many such acts might have been charged in the indictment. If such acts as charged are not within the purview of the statute, they constitute no offense whatsoever. There are no constructive offenses, and there must be a plain violation of a statute before punishment is warranted.

If, as in this case, the indictment charges acts which are constructive offenses, the demurrer thereto should have been sustained, no evidence received upon those issues, and, having failed to sustain the demurrer to the indictment, the Court should have sustained the motion in arrest of judgment. (See motion in arrest of judgment, pp. 60 and 61, T. R.).

In the case of *Fasulo v. United States*, 272 U. S. 620, 47 S. Ct. 200, Fasulo was indicted, with others, and was convicted of a conspiracy to violate a section of the statute denouncing the fraudulent obtention of money by use of the mails. The question for decision was whether the use of the mails for the obtaining money by means of threats of murder or bodily harm was a scheme to defraud within the meaning of the statute. The Government argued that the statute embraced all dishonest methods of deprivation the gist of which is the use of the mails. That opinion, incidentally, referred to the Horman Case, 116 F. 350, in which this Court of the Sixth Circuit, had, in affirming the case, decided that any scheme in its necessary consequence calculated to injure another or to deprive him of his property wrongfully, amounted to a defrauding within the meaning of the statute. But the Supreme Court, in the Fasulo Case, held that the rule laid down in the Horman Case went beyond the meaning of the language of the statute. This is said in the Fasulo opinion:

“Undoubtedly the obtaining of money by threats to injure or kill is more reprehensible than cheat, trick or false pretenses; but that is not enough to require the court to hold that a scheme based on such threats is one to defraud within section 215. * * * it is not permissible for the court to search for an intention that the words themselves do not suggest. *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37.

"If threats to kill or injure unless money is forthcoming do not constitute a scheme to defraud within the statute, there is none in this case. * * * A comprehensive definition of 'scheme or artifice to defraud' need not be undertaken. The phrase is a broad one and extends to a great variety of transactions. But broad as are the words 'to defraud,' they do not include threat and coercion through fear or force. The rule laid down in the Horman Case includes every scheme that in its necessary consequences is calculated to injure another or to deprive him of his property. That statement goes beyond the meaning that justly may be attributed to the language used. * * * .

"There are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute."

To paraphrase some of the above expressions, undoubtedly beating, injuring and harming is more reprehensible than merely transporting the kidnaped victim in interstate commerce, but that is not enough to require the Court to hold that such acts are an ingredient of the act of transporting the victim in such commerce. Again, if beating, injuring, harming and bruising do not constitute transportation of kidnaped persons in interstate commerce, the indictment containing such charges is plainly demurrable. Still further paraphrasing, the phrase "transportation of kidnaped victims in interstate commerce" is a broad one and extends to a great variety of transactions. But broad as are the words, they do not include beating, bruising, injuring and harming. Before appellant can be punished, it must be shown that his case is plainly within the statute.

The appellant, Robinson, Jr., in demurring to the indictment, charged that the matters alleged therein did not constitute any offense against the laws of the United States, and that it did not contain facts sufficient to charge him

with the commission of any offense against the laws of the United States (T. R. 33).

In the case of *United States v. Resnick*, 299 U. S. 207, 57 S. Ct. 126, the accused demurred to the indictment upon the ground that "the facts alleged are not sufficient to constitute a violation of the act." The Court, in that case, sustained the demurrers and discharged the defendants. The United States appealed. In that case, the defendants were charged, in four counts, with having sold for fruits and vegetables two-quart metal hampers which did not comply with the Act, in that they were not of any standard size authorized by the Act and did not come within any tolerance established by the Secretary of Agriculture. Section 1 of the Act in question in that case declared that standard hampers should be of the nine sizes specified, but two-quart hampers were not specified as being among the nine sizes. Section 5 of the Act made it unlawful to manufacture for sale, or to sell hampers for fruits or vegetables that did not comply with the Act, and providing that any one violating that section should be deemed guilty and upon conviction punished by a fine. Said the opinion:

"The question is whether the provisions of the act are effective to make the manufacture or sale of two-quart hampers punishable as a crime. The nine sizes standardized in section 1 are the only ones within section 4. The Secretary was not authorized by section 3 to prescribe tolerances in respect of two-quart hampers, and has not attempted to do so. The indictments must be construed to charge merely manufacture and sale of hampers each of capacity of two quarts, one-sixteenth of a bushel, 134.4 cubic inches. They do not charge that any such hamper purported to be of any size defined by section 1, or was in any respect liable to deceive. It follows that, unless the clause of section 5 which forbids manufacture or sale of contain-

ers 'that do not comply with this Act' makes criminal the manufacture or sale of two-quart hampers, the facts alleged do not constitute any offense.

"Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37; *Fasulo v. United States*, 272 U. S. 620, 628, 47 S. Ct. 200, 201, 71 L. Ed. 443. The clause just quoted is crucial; its words are plain and, having regard to the connection in which they are used, must be given the meaning naturally attributable to them. It is obvious that they do not extend to hampers other than the nine classes defined in section. The act applies to none of capacity less than four quarts. *Pacific States Box & Basket Company v. White*, 296 U. S. 176, 183, 56 S. Ct. 159, 162, 80 L. Ed. 138, 101 A. L. R. 853. IT EXPRESSES NO CONDEMNATION OF TWO-QUART HAMPERS. Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. *United States v. Lacher*, 134 U. S. 624, 628, 10 S. Ct. 625, 33 L. Ed. 1080; *United States v. Chase*, 135 U. S. 255, 261, 10 S. Ct. 756, 34 L. Ed. 117; *Fasulo v. United States*, *supra*, 272 U. S. 620, at page 629, 47 S. Ct. 200, 202, 71 L. Ed. 443. As in absence of governmental regulation the making and selling of containers is untrammelled, failure expressly to permit is not to prohibit. Mere standardization of a bushel container at 2150.42 cubic inches would not make criminal the manufacture or sale of a half-bushel container having capacity of 1075.21 cubic inches. The prescribing of capacities of containers described in section 1 does not prohibit manufacture or sale of the two-quart hampers described in these indictments.

"The judgments sustaining the demurrers and discharging the accused must be affirmed."

In view of that opinion, and the opinion in the *Fasulo* Case, referred to twice in the above quotation, it is plain to be seen that, as Section 408a does not prohibit beating,

bruising, harming or injuring a transported-in-interstate-commerce kidnaped victim, the conviction under an indictment which contains such accusations should not stand.

Still another case, referred to in the Fasulo and Resnick Cases, is that of *United States v. Chase*, 135 U. S. 255, 10 S. Ct. 756, 34 L. Ed. 117. In that case the indictment was under Section 1 of the Act of July 12, 1876, declaring "every * * * book, pamphlet, picture, paper, writing, print or other publication of an indecent character" to be unmailable, and making their deposit in the mails an offense. The question was whether to send an obscene LETTER by mail violated that section. The Court held that the letter was NOT a writing within the meaning of the statute. It said (page 261; 10 S. Ct. 758):

"We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its context, EVEN THOUGH THEY MAY INVOLVE THE SAME MISCHIEF WHICH THE STATUTE WAS DESIGNED TO SUPPRESS."

In the case of *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37, referred to in the Fasulo and Resnick Cases, the opinion was by Chief Justice Marshall of the Supreme Court of the United States. Wiltberger was indicted for manslaughter committed on board an American ship in the River Tigris, in the Empire of China, thirty-five miles above the mouth of the river. Section VIII of the Act in question made it a crime to commit, upon the

high seas, or in any river, haven, basin or bay, murder, robbery or any other offense, which, if committed within the country, would, by the laws of the United States, be punishable with death. Section XII of the Act made it a crime for any seaman or other person to commit manslaughter upon the high seas. ~~The~~ pivotal point in the case was whether the manslaughter was committed upon the high seas, or in a river. It was contended by the United States that Section VIII and Section XII should be construed together so as to bring the crime within the purview of Section VIII. The opinion is a long one, and only pertinent excerpts will be quoted. They follow:

"To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases. . . .

"We can conceive no reason why other crimes which are not comprehended in this act should not be punished. But Congress has not made them punishable, and this court cannot enlarge the statute."

In *Karem v. United States*, 121 Federal, 250 (C. C. A. 6th), appellant was convicted under an indictment framed under Section 5508 of Revised Statutes, and charged him with conspiracy, with others, to intimidate certain persons of color from exercising the right and privilege of voting. Karem demurred to the indictment upon the ground that the facts stated did not constitute an offense against the

laws of the United States, but it was overruled, and the jury found him guilty. The opinion, which is exhaustive, determined that the right to vote is dependent upon the laws of each state, and that the powers of the states were limited in one particular only—the right of the voter not to be discriminated against at elections on account of race or color. The opinion pointed out that the right not to be discriminated against on account of race or color was very different from the affirmative right to vote. The case turned upon the fact that Karem was charged with preventing persons of color from voting—not a crime under federal law, and the opinion concluded by holding that the offense charged in the indictment was not included within or covered by Section 5508, and ordered the judgment reversed, with directions to sustain the demurrer to the indictment.

Appellant, Robinson's, demurrer to the indictment attacked it upon the further ground of duplicity (T. R. 33). The second count charged an aiding and abetting of the transportation in commerce of the kidnaped person, and also an aiding and abetting of the beating, injuring, bruising and harming of Mrs. Stoll. That made it bad for duplicity. In the case *United States v. Hopkins*, 290 F. 619, this was said:

“The first counts in Nos. 1894 and 1895 attempts to charge all four of these offenses and adds to them ANOTHER OFFENSE OF AIDING, ASSISTING, AND ABETTING in each of the 4. The demurrer challenges the indictment on the ground that it is multifarious. I think the objection is well taken. As I understand the law, different charges of crime must be stated in different counts. I do not understand that different offenses, although similar in their nature, may be charged in the same count.”

In *State v. Mattison*, 100 N. W. 1091, the opinion recites:

"The information expressly purports to charge the crime denounced—shooting with intent to kill; but was evidently framed so as to include the crime of maiming, on the theory, apparently, that inasmuch as the crime of maiming resulted from the commission of the shooting, therefore the former could be included in the charge of the latter as an included constituent offense. There is no warrant for such a theory. Only one offense can be charged in the information. * * *

The state cannot, by alleging matters wholly immaterial to the description of the crime charged, compel the defendant to come to trial prepared to contest any issue which the state is not bound to prove in order to convict him of the offense charge. * * *

Maiming is not a necessary element of the crime of shooting with intent to kill. In stating the facts constituting the last mentioned crime it is in no case necessary to show maiming. Maiming may, and often does, result from shooting, but it is a distinct offense, under no circumstances forming part of the consummated crime of shooting with intent to kill. In this case, the maiming and shooting bear precisely the same relation to each other as the larceny and burglary involved in *State v. Smith*, and for the reasons stated in that case, cannot be joined in the same indictment or information."

In the instant case, beating, harming, bruising and injuring are not denounced by Section 408a, and are distinct offenses, and under no circumstances forming part of the consummated crime of transporting in interstate commerce of a kidnaped person. There is no question but what the indictment is bad and that the demurrer to it should have been sustained and that the motion in arrest of judgment should have been sustained.

In the instant case it would be inconsistent to assert that the forepart of the indictment charges an offense de-


nounced by statute even if the concluding part of the indictment charging matters of beating, etc., are not covered by the statute. The answer to such an argument would be that it is impossible to separate the valid from the invalid, and that in this case it is impossible of accomplishment because the jury heard evidence upon the invalid accusations, and it is impossible to say that their verdict and recommendation did not rest upon, or were not considerably swayed by, evidence which they were permitted to receive upon the beating, bruising and injuring portion of the indictment.

The jury heard and considered the evidence concerning the alleged striking and injuring of Mrs. Stoll by the appellant and concerning her condition upon return from Indianapolis. What effect that had upon their verdict and recommendation of the death penalty it is impossible to say. Neither can it be said that the jury disregarded such testimony in arriving at their verdict and making their recommendation. That such allegations had no place in the indictment and that evidence introduced in support thereof was prejudicially received, can not be successfully disputed or brushed aside. The result is that it cannot be determined that appellant was not convicted upon some other theory than beating, bruising and injuring. Consequently what is said in the case of *Williams v. State of North Carolina*, 317 U. S. 287, 63 S. Ct. 207, 210, is peculiarly applicable:

“• • • we cannot determine on this record that petitioners were not convicted on the other theory on which the case was tried and submitted, viz., the invalidity of the Nevada decrees because of Nevada's lack of jurisdiction over the defendants in the divorce suits. That is to say, the verdict of the jury for all we know may have been rendered on that ground

alone, since it did not specify the basis on which it rested. It therefore follows here, as in *Stromberg v. California*, 283 U. S. 359, 368, 51 S. Ct. 532, 75 L. Ed. 1117, 73 A. L. R. 1484, *that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained.* No reason has been suggested why the rule of the *Stromberg* case is inapplicable here. Nor has any reason been advanced why the rule of the *Stromberg* case is not both appropriate and necessary for the protection of rights of the accused. To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights."

Let it be repeated that Section 408a expresses no condemnation of beating, bruising, injuring or harming, as charged in the indictment in question. Before appellant may be punished, it must plainly appear that his case is plainly within the statute. The trial Court should have sustained the demurrer to the indictment and the motion in arrest of judgment. Having failed to do that, it is incumbent upon this Court to correct the error of the trial court, and to reverse the case. It has been conclusively demonstrated in the opinions of the Supreme Court that use of the mails to defraud does not embrace obtaining of money by threats to injure or kill; that prescribing of capacities of vegetable containers does not include two-quart hampers not specified in the Act; that the Act covering unmailable books, pamphlets, pictures, papers, writings and other publications of an indecent character does not embrace an obscene letter, and that an act condemning the commission of manslaughter upon the high seas does not embrace manslaughter committed in a river. That list



could be extended, but that should not be necessary. If such a fine line has been heretofore drawn between the statutes denouncing specified acts as crimes and acts which, though related in character of mischief, are yet not within the statutory provisions, it has been because of the rule that criminal statutes are always strictly construed; that there are no constructive offenses; and, before one can be punished it must be shown that his case is plainly within the statute. It is not asking too much of this Court to follow and be guided by those rules of precedent, when this Court is urgently requested to consider this case in the light of those persuasive standards of precedent, and to reverse it.

II.

THE PROVISIO IS NOT A PART OF THE PUNISHMENT.

The opinion states (p. 3) that the short answer to the criticism that the provision: "provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed" is too vague to form the basis of a valid indictment is that the provisions do not constitute an element or ingredient of the offenses denounced in Section 408a; that they relate to the punishment, and that the Constitution does not grant the accused the right to be informed of the punishment that may be inflicted upon him by law.

That expression in the opinion is in direct conflict with that part of the opinion of the Supreme Court of the United States in *Connally v. General Construction Company*, 269 U. S. 385, 46 S. Ct. 126, to the effect that:

"Penal statutes prohibiting the doing of certain things, AND PROVIDING A PUNISHMENT FOR

THEIR VIOLATION, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another."

Also:

"For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the Legislature meant one thing rather than another."

It is not reasonable to suppose that the Supreme Court would have added the phrase "and providing a punishment for their violation" unless it meant, and what the words indicate, that the punishment provision of a penal statute should not admit of a double meaning. It is significant that this Court, in its opinion, cited but one authority, a text-book, "Bishop on Criminal Law," upon the most important constitutional question in the case; that is, that the Lindbergh Act is unconstitutional because of ambiguity. It is submitted that the Supreme Court authorities cited by appellant in his original brief should be more persuasive than text-book authority on such an all-important question of the case.

It is likewise submitted that the provision in these words:

"provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnapped person has been liberated unharmed,"

does not merely relate to the punishment. To begin with, it is a proviso and is not a part of the punishment. It is in the nature of a limitation upon the imposition of the death penalty. It might be termed an exception. From what is known of the history of this legislation, it is somewhat certain that the Legislature would not have passed the amended Act with the provision deleted. The original

Act passed in 1932 did not provide for the infliction of the death penalty upon conviction, and consequently there was no limitation in the original statute, by way of a proviso, inhibiting the punishment by death under designated circumstances. History of the legislation reveals that Congress added this proviso to the amended Act, when it was enacted into law in 1934, as an inducement to the kidnaper not to kill the victim. It would not have passed the amended Act without incorporating into the amended Act the inducement proviso. The proviso, therefore, may be said to be a component part of the Act and not merely of the punishment feature of the statute. It remains to be determined what effect upon the whole Act the proviso would have, if the language of the proviso is constitutionally invalid. A statute so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the due process of law clause. That this proviso is so vague as to violate the ~~due~~ process of law clause is unquestionable. The opinion in this case recites that the questioned proviso furnishes a basis for proof as to what extent the offense was aggravated, and that if ambiguity be assumed, it is completely negatived by the averments that Mrs. Stoll was beaten, bruised and injured, but such a statement is out of harmony with the principle announced in the Lanzetta case, 59 S. Ct. 618, to this effect:

"If on its *face* the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to invalidate. * * * It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warn against transgression. * * * No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes."

If a statute, or any provision thereof, in invalid, specification of details in an indictment would not validate it; nor would it be permissible to allow evidence to be introduced to prove the specifications in the indictment. If a statute is invalid, it can not be made valid or improved upon by the drawing of an indictment and elaborating upon the ambiguous words of the statute or by the introduction of any amount of evidence. Upon the premise and assumption that this provision in question is invalid, and it is, what then is the effect upon the remaining portion of the statute? In *Connolly v. Union Sewer Pipe Company*, 22 S. Ct. 431, 184 U. S. 540, it is said that when the exemption clause or provision is declared unconstitutional, and that it is clear the Legislature would not have passed the law without including it, then the whole statute must be invalidated. This case is quoted from in the case of *State v. Levitan*, 210 N. W. 111, at page 119, as follows:

“But if an obnoxious section is of such import that the other sections without it would cause results not contemplated or desired by the Legislature, then the entire statute must be held inoperative.”

Of like effect see *Butts v. Merchants and Miners Transportation Company*, 33 S. Ct. 964, at p. 967; 230 U. S. 126:

“Here it is not possible to separate that which is constitutional from that which is not. * * * Those words, as the context and the preamble show, were purposely used. They express the legislative will, and cannot be limited in the manner suggested without altering the purpose with which the two sections were enacted. They must therefore be adjudged altogether invalid.”

See, also, *McFarland v. American Sugar Refining Company*, 36 S. Ct. 498, p. 501:

"We agree with the court below that the act must fall as a whole, as it falls in the sections without which there is no reason to suppose that it would have been passed."

A case dealing with PUNISHMENTS, claimed to be separable, but which were declared otherwise, is that of *Weems v. United States*, 30 S. Ct. 544, 555, the pertinent part of which reads:

"It is suggested that the provision for imprisonment in the Phillipine Code is separable from the accessory punishment, and that the latter may be declared illegal, leaving the former to have application. * * *

"The Phillipine Code unites the penalties of cadena temporal, principal and accessory, and it is not in our power to separate them, even if they are separable, unless their independence is such that we can say that their union was not made imperative by the legislature. * * * This certainly cannot be said of the Phillipine Code, as a Spanish enactment, and the order putting it into effect in the islands did not attempt to destroy the unity of its provisions or the effect of that unity. In other words, it was put into force as it existed, with all its provisions dependent. We cannot, therefore, declare them separable."

See American Jurisprudence, subject "Statutes," Section 439:

"All parts of a statute, including provisos, are to be construed together."

American Jurisprudence, "Constitutional Law," Section 166:

"Although the courts may eliminate parts of an act as unconstitutional and sustain and give effect to the remaining portions, it is sometimes difficult to

apply this process to penal statutes, because they are always strictly construed. Hence the courts incline toward treating a penal statute as void in its entirety whenever one section or clause is clearly unconstitutional."

Enough authority has been cited and quoted from to unerringly convince that the proviso is not only invalid from a constitutional standpoint, but that the whole statute, of which it is a part, is likewise invalid. Any other construction would do violence to the great weight of authority to the contrary.

If this Court, nevertheless, shall refuse to accede to the majority rule and shall continue to insist that the proviso is part of the punishment feature of the statute, then it behooves the Court to follow that line of authority to the effect that facts constituting aggravation of a crime as will increase the statutory punishment must be plainly charged or they are not confessed by a plea or established by a verdict of guilty. The indictment in the instant case miserably failed in that important particular. The appellant, under familiar rule, was entitled to be apprised of the facts constituting aggravation and what facts, not conclusions, amounted to the alleged harmed condition of the alleged victim. In this connection the Court is respectfully urged to consider the Meyers, the Aderhold and Goodman cases, and the quotation from Bishop's Criminal Law, found on pages 91, 92, 93, 94 and 95 of appellant's original brief, all of which are in accord that, under such circumstances, the accused is entitled to have the facts constituting the aggravation of a crime plainly charged.

III.

JURORS ARE ALLOWED TO IMPEACH THEIR VERDICTS TO PREVENT GRAVE INJUSTICE BEING DONE.

The opinion, on pages 18 and 19, says that there was no evidence to support the Court's remarks to the effect that the jury would never have recommended the death penalty except for the effect which they gave to appellant's representations about his relations with Mrs. Stoll, and that such comment of the Court, standing alone, is not sufficient to set aside the verdict, and that had the jurors themselves advanced the same reason as did the Judge, they would not have been heard to impeach their verdict. Two cases are cited, one of which will be referred to later.

It is submitted that, had the jurors made affidavits advancing therein the reasons related by the Judge in the particulars mentioned, it would have been receivable under the exception to the general rule which ordinarily forbids jurors from impeaching their verdicts. But it has never been the rule that misconduct upon the part of jurors may not be shown to impeach their verdict. If that were sound law, instances of the gravest miscarriage of justice, like in the instant case, would be without redress. Collusion could rage rampant between jurors and litigants and others, secure in the veil of secrecy, and under the protection of privilege. Fortunately, acts of misconduct on the jury's part are reviewable. In the instant case, all the testimony and affidavits received upon the subject could not have more convinced the Judge, than he was already convinced, that the reason the jury recommended the death penalty was because of appellant's representations concerning his relations with Mrs. Stoll. The Judge was speaking judi-

cially, when he made that statement, of what was tantamount to misconduct on the part of the jury. If this jury, as it did, recommended the death penalty for what appellant said rather than what he was indicted for, can it be correctly said that such a jury was not guilty of such gross misconduct as not to be able to have such a verdict impeached? In this case it was not necessary for the Judge to receive affidavits of the jury to impeach their verdict. The reception of affidavits could not have done more to convince the Judge than he was already convinced. As Judge, he had the power and the right to speak judicially on the subject, and he did so. To have received evidence on that fact would have been a futile and useless gesture. To allow such a verdict and recommendation to go unchallenged and uncorrected would be a terrible thing. The law and the Constitution guarantee a fair trial at the hands of an impartial jury, and they guarantee that a man must not only have a fair trial, but that he must feel that he has had one. The appellant in this case does not so feel. Caesar demanded that his wife not only be virtuous but beyond suspicion. There is room for suspicion that the verdict and recommendation in this case was the result of a biased, inflamed and prejudiced jury.

The Court's opinion cites *McDonald v. Pless*, 238 U. S. 264, as authority that jurors may not be permitted to impeach their own verdict. However, that case recites that there is an exception to the general rule that affidavits may not be introduced to impeach jury verdicts, and it refers to the case of *Mattox v. U. S.*, 13 S. Ct. 50, in which this is said:

— "It is vital in CAPITAL cases that the jury should pass upon the case free from external causes tending to disturb the exercise of deliberate and unbiased judg-

ment. Nor can any ground of suspicion that the administration of justice has been interfered with be tolerated."

As this is a capital case, it comes within the exception in the Mattox case. Justice demands that appellant be tried, if at all, at the hands of an unbiased jury, which is but another impelling reason for reversing this case.

IV.

IF THE DISTRICT ATTORNEY'S REMARKS OVER- STEPPED THE BOUNDS, THAT IS GROUND FOR REVERSAL.

On page 22 of the opinion, the Court admits that the District Attorney's remarks overstepped the bounds, but it is added that when considered in connection with the entire argument they have no prejudicial effect. To that extent the opinion is out of harmony with the Berger, the George Sylvester Vierick, the N. Y. C. R. R. v. Johnson, and other cases of like import from the United States Supreme Court. Citation to those cases may be found in appellant's original brief, pages 183 to 194, and in his supplemental brief. The Court is urgently requested to review the complained of argument and statements of the District Attorney and the Assistant District Attorney, and to consider those remarks in the light of the prevailing authorities on the question. The errors made by the District and Assistant District Attorneys were highly prejudicial, and most assuredly the jury was swayed by such remarks.

Wherefore, it is submitted that the present opinion should be withdrawn; that this petition for rehearing

should be sustained; that a new opinion should be rendered reversing this case, and ordering appellant discharged from custody.

Respectfully submitted,

ROBERT E. HOGAN,
809 Kentucky Home Life Building,
Louisville, Kentucky,
Counsel for Appellant.

Certificate of Counsel.

The appellant, by counsel, hereby certifies that in his judgment the foregoing petition for rehearing is well founded and is not interposed for delay.

ROBERT E. HOGAN,
Counsel for Appellant.

August 15, 1944.



[fol. 1574] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING REHEARING—Entered August 28, 1944

The petition to rehear is denied.

[fol. 1575] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE—Entered September 11, 1944

Ordered, That motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby granted and the mandate is stayed for thirty days from this date; provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any judge thereof, or if the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue.

Approved for entry:

(Signed) Xen Hicks, Circuit Judge.

[fol. 1576] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1577] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 514

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—December 18, 1944

On Consideration of the motion for leave to proceed herein *in forma pauperis*.

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 1578] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 514

ORDER ALLOWING CERTIORARI—January 15, 1945

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the said petition be, and the same is hereby, granted.

It is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted limited to the question presented under Point 1 of the petition for rehearing and under Question 5(d) of the petition for certiorari. The case is transferred to the summary docket.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6116)

FILE COPY

No. 514

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CHARLES ELMORE COMPTON
CLERK

IN THE
Supreme Court of the United States

October Term, 1944.

THOMAS HENRY ROBINSON, JR.,

Petitioner,

VERSUS

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF AP-
PEALS, FOR THE SIXTH CIRCUIT, AND
BRIEF IN SUPPORT THEREOF.

THOMAS HENRY ROBINSON, JR.,

Pro Se.

ROBERT E. HOGAN,

Louisville, Ky.,

Of Counsel.



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IN THE

Supreme Court of the United States

October Term, 1944.

No. _____

THOMAS HENRY ROBINSON, JR., - - - - *Petitioner,*

v.

UNITED STATES OF AMERICA, - - - - *Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS, FOR THE SIXTH
CIRCUIT.**

*To the Chief Justice and Associate Justices of the Supreme
Court of the United States:*

Petitioner, Thomas Henry Robinson, Jr., respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, Sixth Circuit, affirming the judgment of conviction and the death sentence imposed upon petitioner in a criminal cause in the United States District Court for the Western District of Kentucky. The judgment of the United States Circuit Court of Appeals, Sixth Circuit, affirming the judgment of said District Court, was entered on July 31, 1944 (R. 1569). On July 17, 1944, petitioner filed petition for rehearing, which was denied on August 28, 1944. Issuance

of the mandate of the United States Circuit Court of Appeals, Sixth Circuit, was stayed on September 11, 1944, by that Court pending application to the Supreme Court of the United States for writ of certiorari and until further disposition of the case in that Court (R. 1575).

JURISDICTION.

The jurisdiction of this Court is as provided for in Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (Title 28, U. S. C. 347; Title 28, U. S. C. A. 347).

STATUTES INVOLVED.

The statutes directly involved are the Act of June 22, 1932, c. 271, Section 1; 47 Stat. 326, as amended May 18, 1934, c. 301, 48 Stat. 781 (Title 18, Section 408a, U. S. C. A.), and read as follows:

“Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: Provided, That the failure to release such person within seven days after he shall

have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive."

SUMMARY STATEMENT OF MATTERS INVOLVED.

Petitioner has been sentenced to die in the electric chair.

On December 11, 1943, the petitioner, Thomas Henry Robinson, Jr., was found guilty of the offense of transporting Mrs. Alice Stoll, while kidnaped and held for ransom, from Louisville, Kentucky, to Indianapolis, Indiana, and of not liberating her unharmed, and the jury recommended punishment by death (R. 66 and 1519). On December 13, 1943, the petitioner was sentenced by the Court to die in the electric chair at the Eddyville, Kentucky, Penitentiary (66-67).

On October 20, 1934, the Grand Jury of the United States of America, for the Western District of Kentucky, returned an indictment (R. -14), in which the petitioner, his father, and petitioner's wife were charged in the first count of having violated Title 18, U. S. C. A., Section 408c, by conspiring to violate Title 18, U. S. C. A., Section 408a. In the second count of the indictment the three of them were charged with having, on October 10, 1934, unlawfully transported in interstate commerce Mrs. Alice Stoll, while kidnaped and held for ransom, and of having failed to release her unharmed, in violation of Title 18, U. S. C. A., Section 408a.

The petitioner's then wife, Mrs. Frances Robinson, and his father were tried together in October, 1935, in the United States District Court at Louisville, Kentucky, and were acquitted by the jury on both counts. The first count,

a conspiracy count, as to petitioner, was *nolle prossed*. Petitioner was prosecuted under Count Two of the indictment.

On May 11, 1936, petitioner was apprehended in Glendale, California, by agents of the Federal Bureau of Investigation. He was not arraigned in California before any United States Commissioner, Judge, or magistrate, nor did any judge in California issue, nor any United States Marshal execute, a warrant for his removal from California to Kentucky. The record does not disclose any evidence of a waiver of removal. On the night of his arrest, petitioner was rushed to the airport and transported by plane from Glendale to Louisville, arriving in Louisville on the morning of May 12, 1936, in the custody of F. B. I. agents (R. 933).

He was then taken immediately to the Starks Building Office of the F. B. I. and there held incommunicado. While held there he was questioned constantly, and the agents threatened him with the death penalty and told him to plead guilty (R. 934-935). In the late afternoon of May 13, 1936, he was taken, shackled and handcuffed to an F. B. I. agent (R. 935)¹, before the judge of the United States District Court, at Louisville, for arraignment (R. 933).²

He had no counsel and was not allowed to procure any (R. 934).³ His mother was hysterical and his father was intoxicated (R. 934).⁴

He was not allowed to sleep from the time of his arrest in California on May 11th until after he was imprisoned in Atlanta Penitentiary on May 14th (R. 935).⁵

On two occasions previous to the arraignment on May 13, 1936, petitioner had been adjudicated insane by courts of record in his home State of Tennessee, and on each of

¹⁻⁵See Robinson v. Johnston 50 F. Supp. 774.

those two occasions he was committed to insane institutions of that State, the first time on June 27, 1929, and the second time on May 7, 1930 (R. 893-903).⁶

At the time of arraignment, the trial Judge, United States Attorney, Assistant United States Attorney, and F. B. I. agents all had knowledge of the facts relating to the adjudication of petitioner's insanity (50 F. Supp. 774).⁷

Under these circumstances, petitioner was arraigned on May 13, 1936, whereupon he uttered but one word, "Guilty" (R. 935).⁸

He was then sentenced to life imprisonment, and immediately thereafter was taken to the Atlanta Penitentiary. From there he was removed to the Leavenworth Penitentiary, where he was held for ten months (R. 936).⁹

While at Leavenworth Penitentiary he was induced by Warden Zerbst to write a letter, dated July 1, 1936, to a Mr. Bates, then Director of the Bureau of Prisons. Petitioner wrote the letter, and therein disavowed present and prior insanity, upon the promise and inducement made to him, by the said warden, that if he would disclaim present and prior insanity he would be eligible for parole, be taken out of isolation, and be allowed the regular run of the penitentiary (R. 955-960). There was no refutation by the Government or any of its witnesses that petitioner thus acted upon the inducements, hopes and promises held out to him.

From Leavenworth he was transferred to the Alcatraz Island Penitentiary.¹⁰ His conduct at those institutions was exemplary (R. 936).

In 1939, petitioner filed an application for a writ of *habeas corpus* in the United States District Court at San Francisco (R. 936).¹¹ The writ was denied and an appeal

⁶⁻¹¹See Robinson v. Johnston, 50 F. Supp. 774.

was taken (Robinson v. Johnston, 118 F. 2d 998), and the judgment of the lower court was affirmed, one judge dissenting.

The Supreme Court of the United States granted certiorari and reversed and remanded the case to the United States Circuit Court of Appeals for the Ninth Circuit, with leave to petitioner to apply for a hearing *en banc* (U. S., *ex rel.* Robinson v. Johnston, 316 U. S. 649, 62 S. Ct. 1301, 86 L. Ed. 1196). The Circuit Court of Appeals for the Ninth Circuit heard the case *en banc* and reversed and remanded the case to the District Court with instructions to issue the writ of *habeas corpus* and to proceed to a hearing and determination of the merits (Robinson v. Johnston, 130 F. 2d 202). Judge Michael J. Roche, of the United States District Court at San Francisco, granted and sustained a writ of *habeas corpus*, holding that petitioner had been denied his constitutional rights of assistance of counsel and of due process of law (50 F. Supp. 774). In his opinion releasing petitioner, Judge Roche further ordered that petitioner be returned to the Kentucky trial court for further proceedings (50 F. Supp. 775).

Judge Roche did not issue, nor did any Judge, Commissioner, or Magistrate issue, nor did the Marshal of that district execute, a warrant for petitioner's removal to the Western District of Kentucky, as is required by Section 591 of Title 18, United States Code Annotated (R. 116).

Petitioner was returned to Louisville by the California Marshal on September 28, 1943 (R. 172), and delivered to the Kentucky Marshal. On the same date he was brought into the United States District Court at Louisville, and counsel was appointed for him by the Court (R. 6), following which, and at subsequent proceedings, various motions,

a demurrer to the indictment, and other pleadings were filed and ruled upon.

On October 13, 1943, petitioner was arraigned and entered a plea of not guilty (R. 216), and the case was set for trial on November 29, 1943. The trial began on that date. Petitioner exhausted all of his peremptory challenges and used five of those in striking five jurors whom he had unsuccessfully challenged for cause.

On the night of December 11, 1943, the jury returned a verdict of guilty and recommended punishment by death (R. 59, and 1519). Sentence was deferred by the Court until December 13, 1943, on which date counsel for petitioner filed a motion in arrest of judgment (R. 60, 61), and a motion and grounds for a new trial (R. 61), both of which were summarily overruled by the Court (R. 88). The Court followed the recommendation of the jury and sentenced petitioner to die in the electric chair March 10, 1944, at the State Penitentiary at Eddyville, Kentucky (R. 67).

Petitioner filed notice of appeal (R. 90), obtained an order staying and suspending execution of sentence pending appeal (R. 103), and otherwise perfected his appeal to the United States Circuit Court of Appeals for the Sixth Circuit by taking the required steps, including the filing of an Assignment of Errors (R. 115-170), the filing and settling of a Bill of Exceptions (R. 171-1556).

On July 31, 1944, the United States Circuit Court of Appeals, Sixth Circuit, rendered its opinion and affirmed the judgment appealed from (R. 1569).

On August 17, 1944, petitioner filed a petition for rehearing in the United States Circuit Court of Appeals, for the Sixth Circuit (R. 1573), and it was denied on August 28, 1944 (R. 1574). On September 11, 1944, that Court entered an order withholding the issuance of the mandate

and staying sentence pending proceedings in the Supreme Court of the United States (R. 1575).

The following statement of the material parts of the evidence is presented as briefly and as concisely as possible.

Petitioner was born, reared and educated in Nashville, Tennessee. His mother, who still lives, is Mrs. Jessie P. Robinson. His father, now deceased, was Thomas Henry Robinson, Sr., a civil engineer and former manager of the Nashville Bridge Company (R. 891). Petitioner received grade school training and preparatory schooling at Nashville; attended Vanderbilt University and studied law there as a special student for two and one-half years, but did not complete the course (R. 880, 881) for reasons that will appear forthwith.

When about 11 years of age, petitioner was kicked very severely on his right cheek by a horse, which impaired the bony structure of his cheek bone (R. 884). During childhood he had the normal run of children's diseases. At the age of 14 he had malaria in such an aggravated form that it almost cost him his life. Following the malarial disease he had pneumonia and pleurisy when he was between 14 and 15 years of age, and following this he developed tuberculosis in both lungs, for which he was treated at the Davidson County, Tennessee, Tuberculosis Sanitarium, where he was a patient for one year (R. 882, 883).

Petitioner regularly attended the Presbyterian Church, where his father for a period was a deacon and Bible class teacher. He was a member of the Boy Scouts, nearly attaining the rank of Eagle Scout, and his father was Scout Master of the troop (R. 891).

While attending Vanderbilt University he belonged to two fraternities; traveled in good society; was a close friend of James Melton, nationally known star of the

opera, radio and screen; got along well in his studies; had a host of friends, and took an active part in school activities. During his first year in Vanderbilt Law School he was forced to marry a young woman of questionable character, in typical "shotgun" marriage style. Two deputies, the girl, her uncle and her mother came to petitioner's fraternity house and he was served with a warrant which charged him with violation of the age of consent law.

He married her under force and duress, but did not live with her. He had known her less than seven months previous to the forced marriage. Several days after the marriage a nine-months' child was born. This woman to whom he had been married then began to make demands on his parents for considerable money, following which he, through his father, filed an annulment or divorce suit against her, and he was divorced from her (R. 885-888). That affair caused him to be socially ostracized, as it was considered quite a scandal at the time (R. 889).

These misfortunes had a marked effect upon his mental state. The humiliation and scandal disturbed him considerably, thwarted his plans for a legal and business career, and severed his social contacts; was the cause of much embarrassment to him in law school, all of which caused him to brood greatly; changed his plans, his outlook; changed his personality from one gay, pleasant, and personable, to one broody and morose. He avoided his old friends; remained alone most of the time; began to live a secretive life; started dropping his studies, and eventually he quit the law school. He then obtained employment with the Wayne Lumber Company, in Nashville, as cost accountant and timekeeper for a period of about five months, but was discharged for neglect of duty, superinduced by heavy drinking brought about by the forced marriage (R. 889, 890).

After being discharged by the lumber company, he married for the second time on January 9, 1929, and of that marriage there was born a son, James Preston Robinson, now 14 years of age (R. 893).

On June 27, 1929, petitioner was adjudicated insane, the first time, in the Circuit Court of Davidson County, Tennessee, after a jury, which had been impaneled to try the issue of his sanity, returned a verdict declaring him to be "insane and too dangerous to society to be set at large" (R. 897, Defendant's Exhibit No. 14). It was the unanimous diagnosis of the Staff of the Central State Hospital, at Nashville, that he was suffering from the schizophrenic type of dementia praecox. He was then committed to that hospital, where he stayed confined for about one year (R. 895-898).

On May 7, 1930, a jury impaneled by the Davidson County Court to inquire into his sanity rendered a verdict that he was of unsound mind and did not have capacity sufficient for the government of himself or his property (R. 897, 900, Defendant's Exhibit No. 15), after which he was committed to the Western State Hospital for the Insane, at Bolivar, Tennessee, where he remained three months (R. 896-900). His father was appointed his legal guardian (R. 901).

On August 24, 1930, he was taken out of Western State Hospital at the instance of his father, over the strenuous objections of the Superintendent, Dr. E. W. Cocke (R. 902).

Following his removal from Western State Hospital, petitioner was not, and has never been, restored to sanity by any proceeding in any court (R. 901, 902) until found sane just before trial in 1943 by four psychiatrists appointed by the court (R. 1388-1389).

After petitioner's removal from Western State Hospital, he returned to his parents' home in Nashville and made several attempts to obtain employment, but was unable

to do so until nearly a year later (R. 903). He finally obtained employment with Servel, Incorporated, at Evansville, Indiana, but quit after one day and went home (R. 903).

He found it more difficult to get employment because the stigma of insanity was worse than the disgrace of the forced marriage. Most of his old friends, particularly the girls, shunned him, and he stayed mostly to himself. He felt that his friends were talking about him; every time he saw a group of them he felt that they were talking about the insanity adjudications and his forced marriage. He had quit going to church because he felt that the ministers were preaching directly at him (R. 904).

While in the insane institutions he felt that the doctors were against him and he tried to convince them he was sane; he felt that the doctors were persecuting him and that they had no right to hold him (R. 95; 1094-1121).

He had many ideas of grandeur—believed that he could cope with national problems, such as religion, politics, and national events (R. 906). He is, in reality, a descendant of Patrick Henry, deriving his middle name from that relationship. He felt that he was the reincarnation of Patrick Henry and that he should have some high place in national affairs; that he had been ordained to carry out Patrick Henry's work. He spent a great deal of time arguing with his family that that was true, and when his family would not agree with his theories, he would become very angry and go to his room and close himself in (R. 907, 908). At one time he threatened to shoot his father (R. 1074), and on one occasion tore his wife's dress to pieces (R. 1075). His whole personality would undergo a complete change—his eyes would take on a crazy stare and he would fly into tantrums (R. 1074).

In June, 1931, his father procured employment for him with the Stoll Oil Refining Company in Louisville. His

father formerly had been associated with Mr. C. C. Stoll in a business venture. He was given a job as filling station attendant, which duties included the care of a parking lot in the rear of the station. He worked for that company for about six weeks (R. 909).

During the period of his employment at that station, Mrs. Alice Stoll drove her car into the station to have it parked on an average of several times a week and he would park it for her (R. 910; 752-754). During this time he claims that he became acquainted with her and had frequent conversations with her (R. 910). On her direct examination, Mrs. Stoll denied knowing him prior to October 10, 1934, the date of the alleged kidnaping (R. 534). Mr. H. C. Richardson, former manager of the Stoll station, who was summoned as a Government witness, admitted on cross-examination that it was very possible that Mrs. Stoll saw petitioner on the occasions, about twice a week, when she would park her car at that station (R. 752-754).

Petitioner testified that he met Mrs. Stoll several times during the period of his stay in Louisville in the year 1931, and that he had sexual relations with her, on one occasion at a secluded country spot, on one other occasion at a tourist camp on the outskirts of Jeffersonville, Indiana, and on two occasions at the Beech Grove Tourist Camp (R. 911-913). Mrs. Stoll was not called as a rebuttal witness to refute this testimony.

Testimony was introduced by the Government to establish that, at the time petitioner testified he went to the Beech Grove Tourist Camp with Mrs. Stoll, the place was known as the Beechwood Inn, and that no tourist cabins were in existence at that time (R. 1347-1364) Beechwood Inn changed its name to Beech Grove Tourist Camp in August, 1931 (R. 1352), while petitioner was still in Louisville, working then for the Mutual Life Insurance Com-

pany, where he was employed until September 12, 1931 (R. 913, 1496).

As a surrebuttal witness, petitioner called Mr. Ivan Carlisle, owner of the Beechwood Inn. Mr. Carlisle testified that he was the owner of the inn during the summer of 1931, before it changed hands and names; that during that summer he had rooms available for tourists, and which he rented to tourists (R. 1417, 1422, 1423) and that such accommodations existed when he leased it to Mr. Allen and when sold to a Mr. Palmer. Mr. Carlisle testified that the F. B. I. held him incommunicado in their office on Thursday and Friday preceding the day (Saturday) he testified; that he had made a statement to the F. B. I., and told them, in substance, what he testified about from the witness stand, but that he could not get away from them because they would not let him go, and that they went with him everywhere he went (R. 1423, 1424).

No rebuttal testimony was offered by the Government to refute petitioner's testimony to the effect that he had accompanied Mrs. Stoll to a tourist cottage on the outskirts of Jeffersonville, Indiana.

Petitioner left Louisville in the fall of 1931 and went home. Following a period of unemployment, he went to Winnetka, Illinois, where he worked as a salesman for an oil burner concern for two weeks. He returned to Nashville, remained unemployed for months, and in the summer of 1932 he became a salesman of night-law courses for the Andrew Jackson Business College. He quit that work. Then he and an attorney representing the Spreckels Estate attempted to promote a business venture, but he soon severed that connection. From January 1, 1933, to April 1, 1933, he and his wife worked in an apartment hotel in South Bend, Indiana, he as maintenance man and his wife as housekeeper. He was discharged from that job. He then went to Chicago and tried to get employment from

April, 1933, until mid-summer of 1933, but was unsuccessful. He registered at employment agencies, answered ads. in the newspaper "help-wanted" columns, and typed literally hundreds of letters of application, but it was during the depression period and he met with no success. While connected with the business college, he had written a book on how to get a job (R. 913-917).

During the time he was trying to get employment some prospective employer either told him, or he imagined it, that Mr. Stoll was giving him bad references. He had given Mr. Stoll as a reference in his applications for employment, and he felt that he was being refused employment solely through Mr. Stoll giving him a bad name (R. 918).

In November, 1933, petitioner was employed as time-keeper for the DuPont Company, but was discharged in May, 1934, after his insanity record had come to the attention of John Ward, chief clerk (R. 920, 1312, 1314).

In May of 1934 he sought re-employment of Mr. C. C. Stoll, but Mr. Stoll told him that it was not the policy of the company to rehire employees who had once quit, and also mentioned the depression and said that the country was in the hands of a dictator, meaning President Roosevelt, and that he, Stoll, would not spend one dime to even buy paint for his filling stations. Those statements convinced petitioner that it had been because of Mr. Stoll that he had failed to get employment with other concerns; petitioner felt in his own mind that Stoll was a menace to the country and that something should be done about it. That idea became firmly entrenched in petitioner's mind (R. 919).

He did not have any revengeful thoughts toward Mr. Stoll; being actually a descendant of Patrick Henry, and believing that he was the reincarnation of that patriot, he felt impelled, through that inspiration and through a pa-

triotic duty, to do something about the person he considered a menace (R. 920).

Following this interview with Mr. Stoll, petitioner returned to Chicago and, through a friend, obtained a job as night janitor in a building in Oak Park, where he worked for a few weeks. That was the last job he had (R. 920, 921).

He stayed in Chicago for about two months. In September, 1934, he rented a car from the Saunders Drive-It-Yourself System in Chicago, drove himself and wife to Indianapolis, and rented an apartment there at 2735 North Meridian Street. He tried to get employment, but failed. He began to brood a great deal, and Mr. Stoll constantly entered his mind. He felt that Mr. Stoll had been the cause of most of his trouble; that Mr. Stoll was a menace to the country and was responsible for the depression, and he felt impelled, from a patriotic standpoint, to take some immediate action (R. 922).

While in the apartment in Indianapolis he prepared a ransom note with the idea of abducting Mr. C. C. Stoll. He then drove himself and wife to Louisville. His wife went home to Nashville and he stayed in Louisville at the Tyler Hotel (R. 922).

On October 9, 1934, with the purpose of carrying out his plan, he drove to Mr. C. C. Stoll's residence in Louisville and entered the home under the pretense of being a telephone repairman. He didn't find him at home, so he went over to the adjoining house of George Stoll, brother of C. C. Stoll, using the same pretense, but he did not find C. C. Stoll there, so he abandoned the idea for that day (R. 923).

On the next day, October 10, 1934, he planned to kidnap Berry Stoll, husband of Mrs. Alice Stoll, and son of C. C. Stoll. He knew Berry Stoll, having worked for his com-

pany, and petitioner held him equally blamable for the plight of the country and of petitioner (R. 923).

On October 10, 1934, at about 2:00 P. M., he drove to the home of Berry Stoll, gained admission to the house by again pretending to be a telephone repairman, and used that ruse to reach the second floor. He encountered Mrs. Alice Stoll in the guest room, and upon seeing him she inquired: "What are you doing here?" (R. 552, 924), and he replied that he had come to kidnap Berry. She remarked: "Well, you can't get away with that. You know Berry. You are just an amateur" (R. 924). He and Mrs. Stoll talked for about an hour. She offered him a check, which he refused (R. 554). She then suggested that she would go herself instead of him taking Berry, stating that she was anxious to get away before Berry came (R. 557). She got her coat from the closet, put it on, then she and the petitioner left the house and got in the car—she in the back end and he in the front (R. 924, 925).

Mrs. Stoll and the maid, Ann Woollet, claimed that petitioner bound Mrs. Stoll's wrists and taped her mouth (R. 522, 609), but that is disputed by petitioner. Mrs. Stoll herself testified that she was allowed to get and did get her coat before proceeding to the car (R. 522, 523). She did not explain how she was able to do this with her hands bound. Mrs. Stoll and the maid also testified that petitioner struck Mrs. Stoll twice with an iron pipe when she tried to procure a gun (R. 610-611), one of which blows allegedly caused blood to flow freely upon a bedspread (R. 610, 611). No blood-soaked bedspread or coat were produced at the trial. Mr. Edwin R. Donaldson, a Government expert, testified that the only blood submitted to him in this case for analysis was a small spot on an envelope and that he was unable to determine whether this minute spot of blood was human or animal (R. 832).

Petitioner vigorously denies that he struck her. The maid, Ann Woolet, signed and executed an affidavit in September, 1935, which contradicted and impeached her testimony, but the Court refused to permit petitioner to impeach her by showing this or by showing by witnesses William K. Powell (R. 1058-1069), Joseph M. Hayse (R. 1032, 1036, 1166-1185), and Nellie S. Hayse (R. 1185-1191) that she had made contradictory statements and had signed and executed the affidavit. The testimony of these witnesses was put in the record by avowal.

An iron pipe was produced (R. 654; Government Exhibit No. 34) wrapped in brown paper bearing an unexplained stain which to the jury may have resembled blood, but which was not blood nor claimed to be blood, said stain being in all probability iodine or silver nitrate which is commonly used in fingerprint work. Government experts did not testify to finding petitioner's prints on either pipe or paper. Neither Mrs. Stoll nor any other witness had placed any identifying mark on pipe or the paper in which it was wrapped. There was no evidence that petitioner wore gloves when in the Stoll home. Without having it positively identified, the United States Attorney filed it as an exhibit, displayed it before the jury, and at one point in the proceedings struck it with a hard blow against counsel table. Counsel for petitioner objected, and the District Attorney apologetically asserted it to have been an accident (R. —).

When told to describe her physical condition at time of release, Mrs. Stoll was not asked, nor did she state, who had caused the conditions which she claimed were in existence at that time, and neither was she asked, nor did she state, whether those injuries were the same as, or the result of, the previously inflicted injuries which she claimed were

caused by petitioner six days earlier (R. 545). There were two other persons also charged in the indictment with this offense. It is the contention of petitioner, first, that Mrs. Stoll was not in a harmed condition at time of release, and, second, that there was no evidence that he caused the injuries which were claimed to be in existence at that time.

After leaving the Stoll house, petitioner and Mrs. Stoll drove from Louisville to Indianapolis, and went to the apartment which petitioner had previously rented. Mrs. Stoll assisted in the preparation of a meal, and both she and petitioner ate what had been prepared (R. 928). It is likewise made an issue that petitioner transported Mrs. Stoll from Louisville to Indianapolis while she was kidnaped or held for ransom.

Petitioner and Mrs. Stoll occupied the Indianapolis apartment for six days, during which time they ate meals prepared by her, drank beer, listened to the radio, read newspapers and discussed current events (R. 928). He maintains that for the first four days she was not restrained in the apartment, but that she was there willingly, and that he left her there, unrestrained, at such times as he found it necessary to go out (R. 928, 929). On the contrary, Mrs. Stoll claimed that she was bound to the bed at night, bound, gagged, and put in a closet on a chair on each occasion that petitioner left the apartment, and that he constantly threatened her with a gun, and that she was afraid to attempt to escape. On cross-examination she admitted that petitioner treated her like a gentleman (R. 564).

The apartment was on the ground floor. A window and toilet seat of the exact measurements of those in the apartment bathroom, and similarly arranged, were assembled in the courtroom and a Miss Marjorie Kirchhubel, a young

woman of Mrs. Stoll's build and weight, demonstrated that by stepping on the toilet seat, raising the bathroom window, and easing through, Mrs. Stoll could have liberated herself from the apartment (R. 1122). Mrs. Stoll testified that when she was in the bathroom, petitioner always stayed in the living room. Testimony and exhibits show that the bathroom window was not visible from the living room. Mrs. Stoll stated that she could have locked the bathroom door from the inside. She made no effort to raise the bathroom window and escape, or seek help, or slip a note out of the window. Witness Johnson, the apartment house custodian, testified that between the 10th and 16th of October, 1934, garbage was removed regularly from petitioner's apartment; milk was delivered, tradesmen came and went, and that the janitor's quarters were directly beneath the apartment and that he, 5 feet 11½ inches in height and weighing 169 pounds, could and had gone through that bathroom window (R. 712-720).

During the time petitioner and Mrs. Stoll were in the apartment, she wrote letters to members of her family and to intimate friends for the purpose of facilitating the payment and delivery of the money. She claimed that she was directed and compelled to write them (R. 533), but petitioner maintains that she wrote them voluntarily (R. 932).

The sum of \$50,000.00 was procured and delivered to petitioner's father, who had agreed to act as intermediary at Mr. Stoll's request, and this sum was taken by petitioner's wife to the Indianapolis apartment at ten o'clock on the morning of October 16, 1934 (R. 972). Petitioner left the apartment for the last time that morning and his wife remained with Mrs. Stoll (R. 928).

Mrs. Stoll testified on direct examination that before petitioner made his final departure he bound and gagged

her; that Mrs. Robinson did not untie her or remove the gag until that afternoon when she was released (R. 545). Petitioner denies this. He testified that at the time of his final departure, Mrs. Stoll was drinking milk and eating some breakfast prepared by Mrs. Robinson (R. 938). On cross-examination Mrs. Stoll admitted that she and Mrs. Robinson stayed in the apartment until the afternoon of that same day, during which time they engaged in conversation about trivial matters; that Mrs. Robinson went out and got some sandwiches and beer and that the two of them ate them and that Mrs. Stoll drank two bottles of beer (R. 584). Mrs. Stoll did not explain how she was able to eat, drink, and talk while she was bound and gagged.

From the apartment Mrs. Robinson and Mrs. Stoll went to a drug store where Mrs. Robinson called a taxicab and the two of them went to the home of a Rev. Clegg, a relative of Mrs. Stoll (R. 585). At the Clegg home Mrs. Stoll called a Miss McHenry in Louisville to notify her that she was returning to Louisville (R. 586), after which Mrs. Stoll, Mrs. Robinson and the Rev. and Mrs. Clegg started to drive to Louisville in the Clegg automobile. They were overtaken by F. B. I. agents at Scottsburg, Indiana, who stopped the party and took Mrs. Robinson in custody. Mrs. Stoll arrived at her home that evening, and that same evening, at the request of F. B. I. agents initialed 94 five dollar bills (R. 806). Dr. Frazier was called in to see Mrs. Stoll upon her return to Louisville, and testified that her scalp abrasion had healed, but he did not state what had, or could have, caused the healed injury.

Mr. Berry Stoll, husband of Mrs. Alice Stoll, stated to a Jefferson County police officer, named Long, who had been assigned to the Stoll premises to guard them, that Mrs. Stoll felt better from the experience than she had

been feeling before, adding that: "From the excitement it seems like it has cured the nervousness some" (R. 1020). This policeman also testified that he saw Mrs. Stoll following her release and talked to her, and that she did not appear to have been injured; that she said she felt all right and that she was not complaining (R. 1020).

The indictment charges, and there was some testimony to the effect that Mrs. Stoll was not released unharmed (R. 541-545), but it is most vehemently insisted by petitioner that Mrs. Stoll was in sound physical condition when she left the Indianapolis apartment. The record does not disclose that Mrs. Stoll made any complaint of injury or suffering or requested any treatment at the drug store where she called a taxicab, or while at the Clegg home in Indianapolis, or while with the F. B. I. agents on the journey from Scottsburg, Indiana, to Louisville.

After leaving the apartment in Indianapolis on the morning of October 16, 1934, Robinson, Jr., made his way to New York City and eventually to Glendale, California, where, as above stated, he was taken in custody by F. B. I. agents on May 11, 1936, was returned to Louisville, illegally sentenced to life imprisonment, and, after serving over seven years on the illegal sentence, was released on a writ of *habeas corpus*, retried at Louisville and found guilty, and sentenced to death on December 13, 1943.

At the trial petitioner filed copies of the insanity decrees as exhibits (R. 897-901). The trial court in its instructions informed the jury that the presumption of insanity continued until the contrary was proven by the Government beyond reasonable doubt (R. 1510).

On behalf of petitioner, Dr. H. B. Brackin, former staff psychiatrist of Central State Hospital, testified that in his opinion the petitioner was insane, suffering from the schiz-

opphrenic type of dementia praecox, in 1929, and that before and after October, 1934, that he did not have control over his will (R. 1139).

By agreement, the affidavit of Dr. Horace Gayden was read by Dr. Brackin into the record. That affidavit showed that between the dates of May 28, 1932, and October 4, 1932, he and his brother treated petitioner for syphilis (R. 1096, 1097).

There was next presented on petitioner's behalf Dr. Leon L. Solomon and Dr. Thomas J. Crice, of Louisville, both well known and well qualified psychiatrists, who testified that they had conducted a thorough examination of petitioner extending over a period of several weeks, and in answer to a hypothetical question (R. 1203-1218) propounded by counsel for petitioner, they stated that in their opinion the petitioner on, before and after October 10, 1934, did not know right from wrong; did not have sufficient willpower to govern him in his ability to distinguish between right and wrong and that he could not resist his impulses to accomplish his act (R. 1218, 1219).

In rebuttal the Government presented Dr. E. W. Cocke, former superintendent of Western State Hospital (R. 1289-1312), who testified that in his opinion petitioner was not insane when held at that institution, but was a "psychopathic personality" (R. 1289-1312). Despite his opinion that petitioner was sane, Dr. Cocke stated that he held, and would have continued to hold, petitioner in the insane asylum (R. 1296). Dr. Cocke advised petitioner's father against removing him from the hospital (R. 1297).

There was also introduced in rebuttal Dr. Singleton, prison psychiatrist at Leavenworth Penitentiary, and Dr. Richey, prison psychiatrist at Alcatraz Penitentiary (R. 1326-1341), who testified that they examined petitioner

between 1936 and 1939, and that in their opinion he was sane but "constitutionally psychopathic" at the time of their examination (R. 1326-1341).

The Government also presented in rebuttal Drs. Landis, Kimbell, Ackerly, and Gardner, four psychiatrists of Louisville, who, in response to a hypothetical question (R. 1373-1387) propounded by counsel for the Government, testified that in their opinion petitioner was not insane on October 10, 1934 (R. 1365-1370). They stated that in their opinion petitioner was not then, and was never, a psychopathic personality (R. 1387, 1396), as diagnosed by Drs. Cocke, Singleton and Richey, the other psychiatrists who appeared for the Government. These four doctors had been appointed by the Court October, 1943, for the sole purpose of examining petitioner's present mental condition. Petitioner's counsel was present at the examination in the jail and questions and answers were confined to the time the examination was being made, excluding everything that had happened prior to that date of the examination (R. 1393-1395).

This summary of the psychiatric evidence completes petitioner's presentation of the material facts in the case.

QUESTION PRESENTED.

1. Whether the statute involved, to-wit, the Act of June 22, 1932, c. 271, Section 1; 47 Stat. 326, as amended May 18, 1934, c. 301, 48 Stat. 781 (Title 18, Section 408a, U. S. C. A., commonly known as the Lindbergh Act) is unconstitutional because too vague and indefinite and prescribing no fixed or ascertainable standard of guilt or punishment.

2. Whether the rights of the petitioner have been infringed under the Fifth and Sixth Amendments to the Constitution of the United States by the trial, conviction and sentence of petitioner under the aforesaid statute.

3. Whether this is a capital case;

(a) Whether petitioner violated the said Lindbergh Act.

4. Whether Count Two of the indictment, under which petitioner was tried, convicted and sentenced is void, and the rights of petitioner, as guaranteed under the Fifth and Sixth Amendments to the Constitution have been denied him.

5. Whether the proviso in said Lindbergh Act, in these words:

“provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed.”

qualifies and restrains the generality of the substantive enactment, to which it is attached, as to be a component part of the enacting clause

(a) Whether the aforesaid proviso is vague and indefinite and therefore unconstitutional;

(b) Whether the aforesaid proviso, if unconstitutional, is separable from the statute as a whole; or whether the entire statute, of which it is a part, is inoperative;

(c) Whether the aforesaid proviso constitutes an ingredient of the offense, or merely relates to the punishment; if the latter, is petitioner yet entitled to be informed of the punishment that may be inflicted upon him by law?

- (d) Whether the death penalty was intended to be inflicted regardless of the time when inflicted or the degree of injury inflicted.

5a. Whether the question of the invalidity of said statute can be solved by resorting to the intent of the Legislature.

6. Whether, by the District Court permitting misconduct on the part of the District Attorney and Assistant District Attorney, in the presence of the jury, and permitting them to make highly inflammable, caustic, and out-of-the-record remarks, particularly their closing remarks, which swayed the jury and influenced it to render a verdict of guilty and recommend the imposition of the death penalty; and by not instructing the jury to disregard such remarks and misconduct, or in discharging the jury, the petitioner was denied due process of law.

6a. Whether petitioner, by being convicted and sentenced to death upon an offense not contained in the Lindbergh Act nor charged in the indictment, was denied due process of law.

6b. Whether the District Court prejudicially abused discretion by failing to sustain motion to arrest judgment and motion for a new trial, and by failing to grant petitioner a new trial, in view of the fact the conviction was on a charge not made, and that the Court declared it was its opinion that the jury would not have recommended the death penalty and the Court would not have imposed it, except for petitioner's statements about his relations in 1931 with the kidnaped victim—some three years prior to the time of the commission of the alleged offense, and even prior to the enactment of the Lindbergh Act (R. 1547).

7. Whether the trial and proceedings were conducted in such an unfair manner as to deprive petitioner of a fair and impartial trial, and as to deny him due process of law.

8. Whether the Court below erred in affirming the judgment.

9. Whether the indictment under which petitioner was tried, convicted and sentenced is demurrable:

- (a) Because duplicitous;
- (b) Because it fails to set forth with certainty the nature and cause of the accusation;
- (c) Because it contains acts which are constructive offenses;
- (d) Because it should have set forth, with particularity, essential facts constituting such aggravation of the offense charged as to increase the punishment to death.

9a. Whether if the aforesaid statute is unconstitutional, specification of details in the indictment would cure the invalidity.

10. Whether the injuries to the victim, if inflicted prior to kidnaping and transportation in interstate commerce, merged into the statutory offense of transporting a kidnaped person, and made the death penalty applicable:

- (a) Whether the evidence was sufficient to establish that petitioner inflicted the injuries claimed to be in existence upon release of the victim; if not, whether the question of the injured victim upon release should have been submitted to the jury;
- (b) Whether the nature and degree of injuries control in the recommendation and infliction of the death penalty.

11. Whether the Government sufficiently established all essential elements of the offense alleged.

12. Whether petitioner was denied due process of law by the District Court's permitting the prosecution to reveal that petitioner had been charged with, but not convicted of, prior offenses:

- (a) Whether proper to establish, by cross-examination of petitioner, that he had smeared, or attempted to smear, other women.

13. Whether, by permitting petitioner to be illegally impeached on cross-examination by incompetent questions and involuntary admissions, petitioner was denied due process of law:

- (a) Whether admission elicited on cross-examination of petitioner was involuntary and because thereof amounted to denial of due process of law;
- (b) Whether, in view of previous adjudications that petitioner had been denied due process of law because of prior insanity and denial of advice of counsel (*Robinson v. Johnston*, 50 F. S. 775), such prior adjudication was *res judicata* on the issue of the lack of advice of counsel when admission was made, voluntariness of the admission, and the admissibility in evidence of it.
- (c) Whether refusal of District Court to hear evidence on voluntariness of such admission out of presence and hearing of jury was a denial to petitioner of due process of law.

14. Whether petitioner was twice placed in jeopardy for same offense.

15. Whether there was a failure by the Government to establish that Mrs. Stoll was held for ransom or reward before being transported in interstate commerce.

16. Whether evidence of the Government's fingerprint and handwriting expert witnesses should have been stricken:

- (a) Whether the rule announced by this Court in the *Erie-Railroad v. Tompkins* case applies to Federal criminal cases, thus making it necessary for the Government to have complied with Kentucky Statutes by giving notice of intention to use handwriting and questioned-documents expert.

17. Whether petitioner was entitled to a directed verdict of acquittal.

17a. Whether Ann Woollet, the maid of Mrs. Stoll, one of the Government's main witnesses, should have been impeached.

18. Whether the District Court's instructions were erroneous:

(a) Whether that Court erred in refusing to give certain of petitioner's offered instructions.

19. Whether the District Court made such unfair and argumentative remarks to the jury as deprived petitioner of a fair trial.

20. Whether there was an unconstitutionally impaneled jury:

(a) Whether the alternate juror statute is constitutional;

(b) Whether the alternate juror was lawfully selected and allowed to serve.

SPECIFICATION OF ERRORS TO BE URGED.

The United States Circuit Court of Appeals, Sixth Circuit, erred:

(I) In affirming the judgment

(a) In failing to hold that by the proceedings, trial, verdict and sentence petitioner was denied due process of law;

(b) In holding that Section 408a, Title 18, U. S. C. A., is not ambiguous;

(c) In deciding that the proviso of said statute, containing the words "liberated unharmed" relate to the punishment and do not constitute an element or

ingredient of the offense and therefore petitioner was not entitled to be informed of the punishment that might be inflicted upon him;

(d) In holding that there was no error in given or offered instructions;

(e) In holding that petitioner was not placed in jeopardy;

(f) In holding that the District Court's statements were ineffective to impeach the jury's verdict;

(g) In holding that the District Court did not make unfair comment on the testimony or unfairly deliver the charge to the jury;

(h) In holding that the jury's recommendation of the death penalty was justified by the evidence,

(i) In holding that the District Court did not err in overruling petitioner's motion for a new trial;

(j) In holding that petitioner was not improperly removed from California to Kentucky;

(k) In holding that letters to Prison Director Bates and F. B. I. Agent Smith were written without duress; that they were voluntary and admissible; and in failing to hold that the District Court should have determined the question of the voluntariness of said letters out of the hearing of the jury; and in failing to hold that the District Court should have taken judicial knowledge of petitioner's incompetency and lack of counsel advice when written, in accordance with the previous decision in *Robinson v. Johnston*, 50 F. S. 774.

(l) In holding that the alternate juror statute is constitutional, and that there was no error in selecting either the regular jury or the alternate juror, and that the jury selected was fair and impartial.

(II) The United States Circuit Court of Appeals, Sixth Circuit, erred in failing to hold that the District Court erred:

(a) In permitting, in the presence of the jury, misconduct on the part of the District Attorney and Assistant District Attorney, and permitting them to make highly inflammable, caustic, sarcastic, dramatic, and out-of-the-record remarks, particularly their closing arguments to the jury, which swayed and influenced the jury to convict petitioner and recommend the infliction of the death penalty; in not discharging the jury, and in failing to instruct the jury to disregard such remarks and misconduct.

(b) In not sustaining, and in overruling, petitioner's demurrer to Count Two of the indictment, because:

(1) It is indefinite;

(2) It is duplicitous, and charges more than one offense and fixes therein more than one punishment;

(3) It contains constructive offenses;

(c) In overruling petitioner's motion for directed verdict made at the conclusion of the Government's case and at the conclusion of all the evidence;

(d) In admitting, by way of cross-examination, evidence of prior offenses and threats to smear other women;

(e) In refusing to permit petitioner to impeach witness Ann Woolet, by holding that her statements were confidential as between attorney and client;

(f) In overruling petitioner's motion to strike the testimony of Government witnesses Knowles and Smith and related exhibits;

(g) In ruling that no prior notice, under Kentucky law, was required of the intention to use witness A. pell, handwriting and questioned document expert, and that the rule in the case of *Erie Railroad v. Tompkins* does not apply in Federal criminal cases;

(h) In overruling petitioner's motion in arrest of judgment;

(i, j, k) In suffering petitioner to be convicted and sentenced for an offense not contained in the aforesaid statute nor made in the aforesaid indictment;

(l) In failing to rule that there was no evidence that petitioner inflicted the injuries claimed to have been in existence upon the victim's release, and in admitting evidence on the question of her physical condition at the time of release;

(m) In permitting petitioner to be twice placed in jeopardy for the same offense;

(n) In failing to rule that the Government failed to establish that Mrs. Stoll had been held for ransom or reward before being transported in interstate commerce, an essential requirement under the aforesaid statute.

REASONS FOR GRANTING THE WRIT.

Reason No. 1. Petitioner, first convicted and sentenced illegally on May 13, 1936, in the United States District Court, for the Western District of Kentucky, at Louisville, was denied relief on *habeas corpus* by two erroneous decisions (*Robinson v. Johnston*, 118 F. 2d 998), following which this Supreme Court of the United States granted certiorari and reversed and remanded the case to the United States Circuit Court of Appeals for the Ninth Circuit (*U. S., ex rel. Robinson v. Johnston*, 316 U. S. 649, 62 S. Ct. 1301, 86 L. Ed. 1196).

As a result of this Court's decision, the Ninth Circuit Court of Appeals reversed and remanded the case to the District Court in San Francisco (130 F. 2d 202); the District Court in San Francisco in turn granted and sustained the writ (50 F. Supp. 774), and petitioner was re-tried in the District Court at Louisville, convicted and sentenced to death for what he said of and about the alleged kidnaped victim, rather than the offense for which indicted, and by a trial which petitioner contends was not a fair and impartial trial, but a trial in which many grievous and prejudicial errors were committed; and that the entire proceedings, trial, verdict, judgment and sentence were illegal and in violation of his constitutional rights.

As it was at the instance of this, the Supreme Court of the United States, that petitioner was able to obtain relief from an illegal conviction and sentence upon the same identical charge and indictment, he respectfully submits that this Court should grant the writ and review the case in order to again safeguard his legal and constitutional rights from infringement by those lower courts which assumed jurisdiction over him following this Court's decision, because to refuse the writ now would mean that the protection from infringement heretofore placed by this Court around petitioner's legal and constitutional rights would all have been in vain and to no avail, and these subsequent violations of petitioner's substantial rights by the lower courts would amount to a virtual interference with this Court's jurisdiction heretofore acquired.

Reason No. 2. The issue as to the constitutionality of, and the construction placed by the courts below on, the Act of June 22, 1932, c. 271, Section 1; 47 Stat. 326, as amended May 18, 1934, c. 301, 48 Stat. 781 (Title 18, Section 408a, U. S. C. A., commonly known as the Lindbergh

Act) involve important questions of Federal law which have not been, but should be, decided by this Court.

Reason No. 3. The statute aforesaid, commonly known as the Lindbergh Act, containing the proviso:

“ * * * provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed,”

is unconstitutional, in that it is not sufficiently explicit to inform those subject to it what conduct will render them liable for penalties, and is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application; and the words and phrases embodied therein fix no ascertainable standard of guilt and forbid no specific or definite act, and it is, therefore, repugnant to the Constitution, because the harm, or freedom from harm, may relate to any time during the period of captivity; it may relate to the moment of release of the victim, or it may relate to the time of the imposition of sentence in court. And the term “liberated unharmed” is a generic term; has no well defined or ascertainable meaning, and is indefinite. The statute which contains the term is silent as to whether it means bodily injuries, mental disturbances, permanent or temporary injuries. It admits of varying degrees of meaning, ranging from slight injuries to grave injuries, and is susceptible of so many interpretations and constructions that the citizen may act upon one conception of its meaning and the courts and juries upon others.¹²

¹²Vierick v. U. S., 318 U. S. 236, 63 S. Ct. 561, 565:

“No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids * * * And the statute fails to indicate what constitutes membership or how

Reason No. 4. While some courts have had occasion to construe the constitutionality of certain phases of the Lindbergh Act, yet no court, save the Sixth Circuit, in this case, has as yet construed the words of the aforesaid proviso in determining the constitutionality of that Act. And the fact that the court below on so vital an issue as this cited but one authority—and that a textbook—shows inherent weakness in its decision.

one may join a 'GANG.' *Lanzetta v. New Jersey*, 306 U. S. 451, 59 S. Ct. 618.

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violate the first essential of due process of law. * * * Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward or clumsy expression, or language wanting in precision, to the intent of the Legislature. For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the Legislature meant one thing rather than another. *Connally v. General Construction Company*, 269 U. S. 385, 46 S. Ct. 126.

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement. * * * This important element (of what constitutes a crowded car) cannot be left to conjecture, or be supplied by either the Court or the jury. * * * Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another." *Capital Traction Co.*, 34 App. D. C. 592, 19 Ann. Cas. 68.

"The sole remaining inquiry, therefore, is * * * whether the words * * * 'to make any unjust or unreasonable charge in handling or dealing in or with any necessities' constituted a fixing by Congress of an ascertainable standard of guilt. *United States v. L. Cohen Grocery Co.*, 255 U. S. 81, 41 S. Ct. 299.

International Harvester Co. v. Kentucky, 234 U. S. 216, 221, 34 S. Ct. 853;

Stromberg v. People of California, 283 U. S. 359, 368, 51 S. Ct. 532, 535;

Weeds, Incorporated v. United States, 255 U. S. 108, 41 S. Ct. 306;

Herndon v. Lowry, 301 U. S. 242, 57 S. Ct. 732;

Smith v. Cahoon, 283 U. S. 553, 51 S. Ct. 582.

"The meaning of the word 'Waste' necessarily depends upon many factors subject to frequent changes. No act or definite course of conduct is specified as controlling." *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210, 52 S. Ct. 559.

The issue of whether the aforesaid Act, containing the aforesaid proviso, is constitutional, involves important questions of Federal law and of great public importance which have not, but should be, decided by this Court.

Reason No. 5. The Sixth Amendment to the Constitution is a guarantee that: "In all criminal prosecutions the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * *." The charge in the indictment, "and did not liberate her unharmed" is part of the nature and cause of the accusation. Petitioner is entitled to be informed of that *accusation* in clear, definite, and specific language. Even though the "unharmed" provision may be said to relate to the punishment, it is *an essential element of the nature and cause of the accusation*. If the "not-liberated-unharmed" provision had been omitted from the indictment, the death penalty could not have been imposed. It is an essential element of the statutes and of the accusation and does not merely relate to the punishment.¹³

¹³The office of a proviso is well understood. It is to except something from the operative effect, or to qualify or restrain the generality, of the substantive enactment to which it is attached." *Cox v. Hart*, 260 U. S. 427, 43 S. Ct. 154-157.

"The general office of a proviso is to except something from the enacting clause, or to qualify and restrain its generality." *U. S. v. Morrow*, 266 U. S. 531, 45 S. Ct. 173.

"If an obnoxious section is of such import that the other sections without it would cause results not contemplated or desired by the Legislature, then the entire statute must be held inoperative." *Cannolly v. Union Sewer Pipe Company*, 22 S. Ct. 431, 184 U. S. 540. *State v. Levitan*, 210 N. W. 111, at p. 119.

"Here it is not possible to separate that which is constitutional from that which is not. * * * They must therefore be adjudged altogether invalid." *Butts v. Merchants and Miners Transportation Co.*, 230 U. S. 126, 33 S. Ct. 964.

"We agree with the court below that the act must fall as a whole, as it falls in the sections without which there is no reason to suppose that it would have been passed." *McFarland v. American Sugar Refining Company*, 241 U. S. 79, 36 S. Ct. 498.

"It is suggested that the provision for imprisonment * * * is separable from the accessory punishment, and that the latter may


The Act reworded would read: "Whoever shall knowingly transport in interstate commerce any person who shall have been unlawfully kidnaped and held for ransom or reward or otherwise, and who fails to liberate said kidnaped person unharmed, shall upon conviction be punished by death if the verdict of the jury shall so recommend." By thus transposing the proviso, it is obvious that it is an essential element of the nature and cause of the accusation. Also, the proviso unquestionably so qualifies and restrains the generality of the enacting clause or substantive enactment to which it is so closely attached as to be an integral, inseparable, component part of the offenses denounced, without which it is reasonably sure the Legislature would not have enacted the other sections.

When an inseparable proviso or clause is unconstitutional, the whole statute must be declared invalid.

The holding by the court below that the aforesaid proviso does not constitute an element or ingredient of the offenses denounced in Section 408a, but that it relates to the punishment; and that there is nothing in the Constitution which grants the accused the right to be informed of the punishment that may be inflicted upon him by law, is in conflict with fundamental bases of construction of criminal statutes and indictments; is in conflict with decisions of this Court; is in conflict with decisions of other Circuit Courts of Appeal, and in conflict with leading decisions of other courts.

be declared illegal leaving the former to have application. * * * It was put into force as it existed, with all its provisions dependent. We cannot, therefore, declare them inseparable. *Weems v. United States*, 217 U. S. 349, 30 S. Ct. 544, 555.

"* * * the courts incline toward treating a penal statute as void in its entirety whenever one section or clause is clearly unconstitutional." *American Jurisprudence*, "Constitutional Law," Section 166.



Reason No. 6. The holding of the court below that the demurrer to the indictment is bad, and that the language "and did not liberate her unharmed" contained therein is not ambiguous or indefinite, is in conflict with the fundamental bases of construction of criminal statutes and indictments and in conflict with decision from this Court and other Circuit Courts of Appeal to the effect that, in an indictment upon a statute, it is not sufficient to set forth the offenses in the words of the statute, unless those words of themselves fully, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished, and the fact that the statute in question, read in the light of the common law, and of other statutes on the like matter, enables the Court to infer the intent of the Legislature does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent, and that such particulars are matters of substance and not of form, and their omission is not aided or cured by the verdict.

U. S. v. Carll, 105 U. S. 611, 26 L. Ed. 1135;

U. S. v. Cruikshank, 92 U. S. 542;

U. S. v. Simmons, 96 U. S. 360;

U. S. v. Hess, 8 S. Ct. 571;

Harris v. U. S., 104 F. 2d 41;

Foster v. U. S., 253 Fed. 481.

Reason No. 7. The court below, in failing to hold the aforesaid indictment duplicitous and demurrable because containing constructive offenses; and more than one offense and prescribing different punishments, is in conflict with decisions of this Court and decisions of other Circuit Courts of Appeal, and in conflict with the fundamental bases of construction of criminal statutes and indictments to the effect that the question of whether or not there are

two offenses depends upon whether each offense requires proof of a fact which the other does not. Applying that formula to the holding of the court below that: "petitioner might have been convicted without any showing that Mrs. Stoll was liberated at all"; it is obvious that the indictment is duplicitous because it charges the one offense of transporting a kidnaped person, for which the maximum punishment is life; and charges the additional offense, in the same count, of failing to liberate unharmed a kidnaped person, for which the maximum punishment is death.

And the further failure of said lower court to hold that the indictment charges a constructive offense not within the purview of the statute; i. e., that petitioner, with others, "did * * * beat, injure, bruise and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll" * * * is in further conflict with decisions of this Court and of other Circuit Courts of Appeal:

Blockburger v. U. S., 234 U. S. 299, 52 S. Ct. 180;
 Albrecht v. U. S., 273 U. S. 1, 47 S. Ct. 250, 253, 254;
 Creel v. U. S., 8th Cir., 21 F. 2d 690;
 U. S. v. Hopkins, 290 F. 619;
 Schultz v. Zerbst, 10th Cir., 73 F. 2d 668;
 U. S. v. Wiltberger, 5 Wheat. 76, 95, 5 L. Ed. 37;
 Fasulo v. United States, 272 U. S. 620, 47 S. Ct. 200;
 U. S. v. Resnick, 299 U. S. 207, 57 S. Ct. 126;
 U. S. v. Chase, 135 U. S. 255, 10 S. Ct. 756;
 Karem v. U. S., 6th Cir., 121 Fed. 250;
 State v. Mattison, 100 N. W. 1091.

Reason No. 8. By charging in the indictment that petitioner failed to release the victim unharmed, there was attempted to be charged an aggravated offense, the punishment for which ~~should~~^{could} be increased from a maximum of life to death.

The holding of the court below that the aforesaid indefinite "unharmed" proviso furnished a basis for proof as to what extent the offense was aggravated, is in conflict with decisions of other Circuit Courts of Appeal, and with the fundamental bases of construction of criminal statutes and indictments to the effect that when an indictment charges an offense the punishment upon conviction for which may be aggravated, the facts constituting such aggravation as will increase the statutory punishment must be plainly charged or they are not confessed by a plea nor established by a verdict of guilty.

Meyers v. United States, 5th Cir., 116 F. 2d 601;
 Aderhold v. Pace, 5th Cir., 65 F. 2d 790;
 1 Bishop's Cr. Pro., Sections 77, 80, 84 (quoted in Aderhold case);
 Goodman v. State (Texas), 172 S. W. 2d 94.

Reason No. 9. The Court below concedes that the District Attorney, in his closing remarks, overstepped the bounds of propriety (p. 22 of the printed opinion) by stating: "These statements, strictly speaking, overstepped the bounds. We have examined them in connection with the entire argument and we regard them as isolated expressions which could have no prejudicial effect." The resulting death penalty recommendation and the statements of the District Court wherein it stated its views on why the jury recommended the extreme penalty is a sufficient reply. In concluding that such misconduct did not constitute prejudicial error the Court failed to give effect to decisions of this Court and of other circuit courts of appeal.

Berger v. U. S., 295 U. S. 76, 55 S. Ct. 628.

"As the case must be remanded to the district court for further proceedings, we direct attention to conduct of the prosecuting attorney which we think

prejudiced petitioner's right to a fair trial, and which, independently of the error for which we reverse, might well have placed the judgment of conviction in jeopardy."

Vierick v. U. S., 318 U. S. 236, 63 S. Ct. 561-566;
 U. S. v. Sprengel, 3d Cir., 103 F. 2d 876, 884;
 Minker v. U. S., 3d Cir., 85 F. 2d 425;
 Turner v. U. S., 8th Cir., 35 F. 2d 25;
 Pierce v. U. S., 6th Cir., 86 F. 2d 949;
 Ward v. U. S., 5th Cir., 96 F. 2d 189;
 Pharr v. U. S., 6th Cir., 48 F. 2d 767, at p. 771;
 Beck v. U. S., 8th Cir., 33 F. 2d 107;
 Turk v. U. S., 8th Cir., 20 F. 2d 129;
 Taliaferro v. U. S., 9th Cir., 47 F. 2d 699;
 U. S. v. Atkinson, 297 U. S. 121, 56 S. Ct. 390;
 Brassfield v. U. S., 47 S. Ct. 135.

Reason No. 10. The failure of the lower court to hold that the charge to the jury and the District Court's comment on the evidence was so argumentative as to prevent petitioner from having a fair trial;¹⁴ and in holding that the said District Court did not make unfair comment upon the testimony of some of petitioner's witnesses, and that in so doing the Court's manner of speech, tone of voice and articulation were not prejudicial, and that the charge was fair and impartial, is in direct conflict with decisions of other circuit courts of appeal.

Sunderland v. U. S., 8th Cir., 19 F. 2d 202, p. 216;
 Weare v. U. S. 8th, 1 F. 2d 617.

Reason No. 11. The holding by the Court below that the District Court's remarks in the following words were

¹⁴On the important issue of whether the victim had been harmed, making possible the infliction of the death penalty:

"I call your attention to the fact that in order for a cut to be partially healed, it must have been inflicted prior thereto.

"On this disputed question of fact the evidence in my opinion is overwhelmingly in favor of the Government's contention that the transportation from Louisville, Kentucky, to Indianapolis, Indiana, was unlawful and against the will of Alice Stoll."

(R. 1509)

insufficient to set aside the verdict: "It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty," is in conflict with decisions of other circuit courts of appeal to the effect that, while recognizing the general rule against impeaching verdicts, a conviction upon a charge not made amounts to denial of due process of law and cannot stand; and that if the nature of the extraneous influence before the jury is such that it would be prejudicial if acted upon, the aggrieved party is not required to disclose by affidavits or testimony that the jurors actually considered it and that where it is patent extraneous influences are believed to have affected the jurors while engaged in deciding whether the death penalty should be recommended, the courts are solemnly required to grant a new trial, even if the effect is to impeach the verdict.¹⁵

U. S. v. Dressler, 7th Cir., 112 F. 2d 972 (a kidnaping case involving the death penalty);

Williams v. North Carolina, 317 U. S. 267, 63 S. Ct. 207;

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736;

DeJonge v. Oregon, 299 U. S. 353, 57 S. Ct. 255;

Stromberg v. California, 283 U. S. 359, 51 S. Ct. 532;

¹⁵It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty. That is my own view, but from my experience and from my own thought in the matter, I doubt very much, even if they had made such a recommendation, the Court would have considered it, except for the testimony on the part of the defendant, which I am accepting as untrue as the jury so found it, and, as I have stated, at the time I thought the Government's evidence overwhelmingly supported their contention in the matter.

(R. 1547)

The Schooner Hoppet and Cargo v. U. S., 7 Cranch,
389, 3 L. Ed. 380;
Commonwealth v. Richardson, 48 N. E. 2d 678.

Reason No. 12. The holding of the Court below that two letters in the nature of involuntary confessions or admissions, written by petitioner while an inmate of the Federal Penitentiary at Leavenworth on July 1, 1936, shortly after petitioner originally pleaded guilty and was illegally sentenced and gotten into evidence by way of cross-examination of petitioner, were written without the slightest duress or constraint, and were wholly voluntary, is in conflict with the wholly undenied and unrefuted testimony of petitioner that he was induced to write them upon the promise and persuasion by the prison warden that if petitioner would write them he would be taken out of prison isolation and would be eligible for parole; and such holding of the Court below is in conflict with decisions of this Court and other circuit courts of appeal to the effect that any inducement, however slight, vitiates such admissions; is in conflict with the **McNabb** and kindred decisions; is in conflict with decisions to the effect that an insane person's confession or admission is void; is in conflict with decisions of this Court (**Johnson v. Zerbst**) to the effect that one charged with crime is entitled to advice of counsel at every stage in proceedings; and is in conflict with decisions to the effect that an accused may not be impeached by incompetent evidence; and is in conflict with decisions to the effect that the question of the voluntariness of confessions and admissions must be determined first by the Court out of the presence and hearing of the jury.

Feldman v. U. S., 64 S. Ct. 1082;
McNabb v. U. S., 318 U. S. 332, 63 S. Ct. 608;
Bram v. U. S., 42 L. Ed. 568, 18 S. Ct. 183;

Ashcraft v. Tennessee, 64 S. Ct. 921;
 Boyd v. U. S., 116 U. S. 616, 6 S. Ct. 524;
 People v. Shroyer, 168 N. E. 336, 336 Ill. 324;
 Harold v. Territory of Oklahoma, 169 Fed. 47.
 Cohen v. U. S., 7th Cir., 291 F. 368;
 Toosisgab v. U. S., 10th Cir., 137 F. 2d 713.
 Gullota v. U. S., 113 F. 2d 683, 686 (8th Cir.);
 Tuttle v. People, 79 Pac. 1035;
 Wood v. U. S., 128 F. 2d 265 (U. S. Ct. of App. for
 Dist. Col.).

Reason No. 13. The holding of the court below that there was no prejudicial error in the admission of evidence tending to show the commission of prior offenses by petitioner is in conflict with decisions of this Court and with decisions of other Circuit Courts of Appeal to the effect that however depraved in character and however full of crime their past lives may have been, defendants are entitled to be tried upon competent evidence and only for the offense charged.

Boyd v. U. S., 35 L. Ed. 1077, 12 S. Ct. 292;
 U. S. v. Dressler, 7th Cir., 112 F. 2d 972 (kidnaping case).

Reason No. 14. The holding by the court below that petitioner was not twice put in jeopardy for the same offense, is in conflict with decisions of this Court and with decisions of other courts that one may not be twice put in jeopardy for the same offense, and that after judgment has been executed on the criminal he can not again be sentenced to another and different punishment.

Ex Parte Lange, 21 L. Ed. 872;
 People v. Warden of Nassau County Jail, 199 N. E. 647;
 Corpus Juris Secundum, Sec. 245, subject "Criminal Law."

Reason No. 15. The holding of the court below that the Federal alternate juror statute is not unconstitutional, and that the participation by the alternate juror chosen in the trial, deliberation of the jury and verdict, occasioned by the illness of one of the regular jurors who was forced to withdraw from the jury was not an invasion of petitioner's constitutional right to trial by a jury of twelve, as provided by the Sixth Amendment, and by Article II, Sec. 2, Cl. 3 of the Constitution; and the holding by the lower court that there was no abuse of judicial discretion in denying petitioner five challenges for cause of five jurors, involve important questions of Federal law, some of which have but others have not been, but should be, decided by this Court.

Wherefore, it is respectfully prayed that a Writ of Certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and proceedings of that Court had in this case, which is numbered and entitled on its docket 9754, Thomas Henry Robinson, Jr., v. United States of America, to (the end that this cause may be reviewed and determined by this Court, and that the judgment of that said Court be reversed, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper.

THOMAS HENRY ROBINSON, JR., *Pro Se,*
Petitioner.

ROBERT E. HOGAN, Louisville, Ky.,
Of Counsel.

BRIEF IN SUPPORT OF THE PETITION.

The Facts.

Petitioner relies upon the facts as summarized in the petition herein and, due to the necessary length of the petition, additional facts will not be restated in this brief except to the extent considered necessary to the argument of the law.

ARGUMENT.

I.

The Court Erred in Not Holding that the Misconduct of the Prosecuting Attorney Was Prejudicial: and in Not Holding that the District Court Made Unfair and Argumentative Comment Upon the Testimony of Petitioner's Witnesses.

By reference, and in order to keep this brief within the bounds of reasonable limits, there is made a part of the argument in support of these points the statement of facts contained in the petition, and the objectionable portion of the District Attorney's closing arguments to the jury and the unfair and argumentative comments of the District Court, appearing in the footnotes. There is here also incorporated by reference the wording of the statute involved and the language of Count Two of the indictment.

There is first of all presented the vital question of how any fair and impartial jury could have recommended the infliction of the death penalty upon petitioner for an offense for which he had been illegally sentenced to life imprisonment and for which he had served more than seven years in prison, over six years of which illegal sentence he had

served in Alcatraz Island Penitentiary, termed by petitioner as "America's Torture Chamber." Especially is this question pertinent in view of the further wholly undisputed facts that the alleged kidnaped victim, Mrs. Alice Stoll, did not sustain any injuries, if any, of a permanent nature, because she appeared in court and testified as the main prosecuting witness for the Government. Not one single word flowed from her lips at the trial to indicate that she was suffering in any way from the effects of the alleged kidnaping. Nor was there any refutation whatsoever of the testimony of former Jefferson County Police Officer Long, assigned to the Stoll estate as a police guard, that when Mrs. Stoll returned from Indianapolis in October, 1936, where she had been taken, she appeared to be in excellent physical condition; nor was there any refutation of his testimony that Berry Stoll, her husband, admitted to him that the ordeal through which his wife had just gone had apparently cured her of her former nervousness.

None but an impassionately influenced jury would have recommended infliction of the death penalty under the facts of this case.

It should be noted at this point that petitioner was charged with the offense of transporting in interstate commerce one who had already been kidnaped. He was not charged with smearing other women, or attempting to, nor for what he might have related concerning his previous relations in 1931 with the alleged kidnaped victim.

The answer to the question is to be found in two things: (1) The prejudicial misconduct of the prosecuting attorney and (2) the unfair comments of the District Court upon the testimony of petitioner's witnesses and the unfair manner and tone of voice with which the District Court delivered his charge to the jury and commented upon certain phases

of the case and testimony. The cumulative effect of the actions of the prosecuting attorney with those of the District Court gave the jury the unmistakable impression that not only did the Government want a conviction but that it was demanding of the jury nothing short of the infliction of the death penalty. When the prosecuting attorney concluded his closing argument to the jury the District Court immediately followed with its unfair comments and charge. The cumulative effect was to take the jury by the hand and lead it into recommending the death penalty.

The prosecuting attorney not only made inflammatory and prejudicial remarks, but went completely outside the record and literally testified in his closing argument to facts outside the record, which were not only prejudicial, but which denied the petitioner's counsel the right of cross-examination. The most outstanding, objectionable, caustic, hearsay portion of his remarks were in these words:

(R. 1494-1499)

"I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll what she would probably have to face. I told her that I didn't know it, but I suspected it. I can see the horror and the disgust and the loathing that came over that little woman's face that night. That had never occurred to her before. You saw her, 'Someone has to do it. I might as well be the one.' And so, I put her on that stand. You saw her, how shaken she was. You heard her story. If I have ever heard a truthful story, that was one. I did not know at what moment the attack of smear campaign would start. . . ."

"We were stymied how to find a person named Allen, how to find some people named Palmer. When there was, Oh, so little time left. So we started out all that night to work, and we finally found some people named Palmer had operated a tourist camp in Nashville. We checked there and found they lived in At-

lanta. We found a man named Allen that had operated it now lives somewhere in the Portland Avenue section of Louisville. That's all we had to go on. A good woman's reputation opens all doors. When we explained what we were up against to the people interviewed, we found a response that to me was simply amazing. On the telephone, I had no power to bring Mr. and Mrs. Palmer up here from Atlanta, over the telephone, no power at all. They were busy people, they were people of affairs, they had their own business in Atlanta, and here I, some person they had never heard of before, when the F. B. I. had finally located them, on the telephone, asking that they come, 'I can't, Mr. Brown. We are busy.' 'You must come. It will help save a good woman's reputation.' These people asked no more. They said, 'We will come. We will come on the first train and we will stay there, if we can save that woman. * * *

"So what does that mean, ladies and gentlemen of the jury, if your verdict be 'Not Guilty.' He walks out of the court room a free man. He is sane now. He has made that claim. The doctors that have examined him said that in their opinion he was sane, and is sane, as of October 11, 1943. This man walks out a free man to resume whatever acts he desires to resume. On past performance those acts will not be good. *On past performance, the mothers and the fathers of young women are running a terrible risk.* * * *

"I am going to close now and leave you one thing: 'And he that stealeth a man and selleth him or if he be found in his hands, he shall surely be trodden down.' "

How could petitioner even begin to hope for a fair verdict under such circumstances? The purpose of the law is to guarantee to every man a fair trial. The petitioner in this case did not have even the semblance of a fair trial. The persistent efforts all throughout the trial of the prosecuting attorney to get before the jury the idea that petitioner was a ruthless prior criminal and smearer of women,

who had escaped punishment only by hiding behind the veil of insanity, in spite of the fact that two different juries in two courts had declared petitioner insane, was a complete stage setting for the dramatically-delivered inflammatory remarks of the prosecutor which followed. Add to that the Court's unfair comments and unfair charge, and the net result is that a fair trial was made impossible, and petitioner was thus denied due process of law.

Right recently this Court has spoken out in no uncertain terms and condemned such practice on the part of the prosecuting attorney. In *Vierick v. U. S.*, 318 U. S. 236, 63 S. Ct. 561, 566, this Court stated that the remarks of the prosecuting attorney, independently of other errors, prejudiced petitioner's right to a fair trial. A comparison of the remarks in the *Vierick* case with those in the instant case clearly demonstrates that the misconduct of the prosecutor in the instant case, coupled with the unfair comment of the District Court, greatly exceed the prejudicial error in the *Vierick* case which this Court thought sufficient to prejudice *Vierick's* right to a fair trial.

In the instant case, it is impossible to calculate how much effect such actions and words had upon the jury. There is one thing certain—the jury did not resolve any doubt in petitioner's favor for they recommended the imposition of the extreme penalty of death.

In *U. S. v. Sprengel* (3d Cir.), 103 F. 2d 876, 884, it was held that the remarks: "We have got to convict these people. They will go wild with this kind of thing. The only way it can be done is by conviction" was prejudicially improper. In the instant case the prosecutor at one point in his argument said this: "So what does that mean * * * if your verdict be 'Not Guilty.' He walks out of the court room a free man.* * * On past performance, the mothers

and the fathers of young women are running a terrible risk."

In *Pharr v. U. S.*, 48 F. 2d 767 (6th Circuit), the very one which affirmed the judgment in this case, denounced similar remarks as highly prejudicial, in these words: "The references by counsel for the government, in his concluding argument, to the misfortunes of, widows and orphans resulting from the wrecking of the bank were in no sense pertinent to the presentation of the issues of the case, and were highly prejudicial."

The same Sixth Circuit, in *U. S. v. Pierce*, 86 F. 2d 949, said:

"Sometimes a single misstep on the part of the prosecutor may be so destructive of the right of a defendant to a fair trial that reversal must follow, as in *Pharr v. U. S.*" (*supra*).

In *Taliaferro v. U. S.*, 47 F. 2d 699 (9th Circuit), the prosecuting attorney stated in his closing argument that he knew certain facts of his own knowledge. In denouncing that conduct, the Court said:

"Cases are to be decided by juries upon the evidence, and when the evidence is offered by witnesses, the witnesses are subject to cross-examination. A defendant should not be subject to a trial upon the unsworn statement of an attorney conducting the prosecution, even when such statements are relevant to the case, for he would by this procedure be debarred the right of cross-examination and be also deprived of the right of offering evidence in rebuttal. It is not within the legitimate province of counsel to state facts pertinent to the issue that are not in evidence. The district attorney has no right to make statements in argument upon his own knowledge, or upon anything else that is not contained in the record."

As will be seen elsewhere in this petition, the District Court stated it was his opinion the jury would not have recommended the death penalty had it not been for petitioner's alleged prior relations with the victim. Petitioner was not indicted for that as an offense. In *Turk v. U. S.*, 20 F. 2d 129 (8th Circuit), the U. S. Attorney said that any time a guilty man is released by a jury "Why, it is simply a red flag, you might say, to others to engage in law violations." The Court denounced such tactics. It had this to say:

"It is as fatal to a fair trial and a lawful conviction of a defendant by a jury that their verdict was for a wrong and unlawful reason as that it was caused by incompetent evidence or an erroneous charge * * * he could not be lawfully convicted because he was a wholesaler rather than a retailer, or because the release of a guilty man by a jury 'is simply a red flag as you might say to others to engage in law violations.' The jury ought not to have been urged by counsel to convict the defendant for any of these alleged reasons and counsel must not expect approval by the court of verdicts sought or obtained on such grounds. When such reasons for verdicts are urged by counsel, it is difficult, if not impossible, to determine whether the verdicts were based on lawful or on unlawful grounds."

In *Sunderland v. U. S.*, 19 F. 2d 202, at p. 216 (8th Circuit), that Court had occasion to define what is meant by a fair trial, and whether or not certain remarks made by the Court in charging the jury were so unfair as to amount to a denial of a fair trial. This is found in the opinion:

"It is further contended that the charge to the jury was so argumentative as to prevent plaintiffs in error from having a fair trial. Throughout the charge to the jury are such expressions as 'The evidence jus-

tifies the claim of the government'; 'The government is justified apparently in claiming'; 'The evidence further discloses'; 'The evidence further shows'; 'It is further shown to me clearly by the evidence'; 'The evidence would further indicate to me'; 'I find little dispute about it in the testimony.'

"While the judge in the federal courts may comment on the evidence and express his opinion on the facts, provided he clearly leaves to the jury the decision of fact question (*Weare v. U. S.*, 1 F. 2d 617 (C. C. A. 8th), yet, as was said in the same case 'the instructions, however, should not be argumentative. The court cannot direct a verdict of guilty in criminal cases, even if the facts are undisputed. *Dillon v. U. S.*, 279 F. 639. It should not be permitted to do indirectly what it cannot do directly, and by its instructions to in effect argue the jury into a verdict of guilty. * * * We think that the charge in the case at bar, taken as a whole, was clearly argumentative."

Compare, then, the comment in the instant case of the District Court at one point in his charge when this statement was made:

(R. 1509) "On this disputed question of fact, the evidence in my opinion is *overwhelmingly* in favor of the Government's contention that the transportation from Louisville, Kentucky, to Indianapolis, Indiana, was unlawful and against the will of Alice Stoll."

That statement accomplished indirectly what could not be done by the District Court directly; that is, by that comment the Court argued the jury into a verdict of guilty on the main issue of the case, whether petitioner unlawfully transported Mrs. Stoll, while kidnaped, in interstate commerce. The jury undoubtedly got the impression that the District Court, as well as the prosecuting attorney, wanted a conviction.

The trial court in its charge to the jury and comment on the testimony (R. 1500-1518) exerted what petitioner claims was a concerted effort to literally "pick to pieces" each defense asserted by petitioner and each bit of the supporting testimony of petitioner's witnesses. Space will not here permit of quotations from the Court's charge, but petitioner adopts by reference the Court's remarks found in the printed Record. Instances of such unfair comment are the Court's unwarranted attack and comment upon whether or not Drs. Leon Solomon and Thomas J. Crice, psychiatrists who testified on behalf of petitioner, were members of the Jefferson County Lunacy Commission. The purpose and effect was to destroy the effect of their testimony on the main question and defense of petitioner's insanity; the unwarranted comment on whether petitioner's actions amounted to those of an insane person; the unfair comment upon the credibility of witness Kirtley, who testified, on behalf of petitioner, that while operating a taxicab along the streets of Louisville he had seen Mrs. Stoll on the day of the alleged kidnaping riding with petitioner and that she was not bound nor gagged and made no effort to attract any one's attention; and to comment upon various other phases of testimony which had a destructive effect on petitioner's defenses.

There is a complete absence of any remark by the Court of a destructive nature to any of the Government's testimony. Just why the Court chose to "pick" on the testimony offered in petitioner's behalf is not known.

The jury unquestionably got the impression that the Court was on the side of the prosecution and wanted not only a conviction, but the death penalty. Juries are swayed tremendously by the Court.

It is submitted that the misconduct of the District Attorney and the unfairness of the District Court combined to prevent petitioner from having a fair trial, and the recommendation of the death penalty by the jury is directly attributable to such conduct. A conviction based on such prejudicial misconduct should not be allowed to stand.

II.

Petitioner Was Convicted Upon a Charge Not Contained in the Indictment and Not Within the Purview of the Statute Under Which Indicted, and His Conviction and Sentence Denied Him Due Process of Law. Even Though the Jury's Verdict May Not Be Impeached, There Is a Remedy When It Is Plain that the Verdict Was Improper. And It Was Prejudicial Error to Admit Evidence of Petitioner's Offenses and That He Had Attempted to Smear Women.

The District Court stated he believed that the jury would never have recommended the death penalty except for the effect which they gave to the claim of petitioner that he had known Mrs. Stoll intimately in the year 1931—three years before the commission of the alleged offense—and that it doubted, even if the jury had made such a recommendation, the Court would have considered it, except for such testimony which the Court and jury accepted as untrue. (R. 1547) Petitioner was not indicted for perjury, nor for his claimed intimacy with Mrs. Stoll. He was supposed to have been tried of the offense of transporting Mrs. Stoll in interstate commerce after she had been kidnaped. In view of the District Court's statement as to why the jury recommended the death penalty, there is left no room for argument as to what reason or influence caused them to

recommend the death penalty. The question then is: Must the courts stand idly by and allow a conviction to stand that is based upon a charge or reason not made in the indictment nor contained in the statute, simply because there perhaps is a rule against impeaching verdicts of juries by the affidavits of jurors, as the Sixth Circuit contends? Or, is there some relief to petitioner from this precarious situation? The general rule is that a conviction upon a charge not made amounts to a denial of due process of law and cannot stand. That statement would seem to warrant the taking of unusual action, if need be, to extricate petitioner from the dilemma of standing convicted for what she said of and about the victim of an alleged kidnaping, without regard to whether or not a jury verdict may be impeached. It is said that if the nature of the extraneous influence before the jury is such that it would be prejudicial if acted upon, the aggrieved party is not required to disclose by affidavits or testimony that the jurors actually considered it, and where it is believed that such extraneous influences may have affected the jurors while engaged in deciding whether to convict, and in this case whether not only to convict, but whether to recommend the death penalty, the courts are solemnly required to act by sustaining a motion for new trial, motion in arrest of judgment or setting aside the verdict. Otherwise irreparable damage would be done those accused of crime. In the case of petitioner, if such a verdict were to be allowed to go uncorrected there would be the unwarranted and illegal forfeiture of petitioner's life.

In *U. S. v. Dressler*, 7th Cir., 112 F. 2d 972, a kidnaping case in which the death penalty was inflicted, the jury was permitted to take into the jury room Dressler's fingerprint card, on the back of which was his criminal history. The

verdict of guilty was followed by a jury recommendation that the death sentence be imposed. Dressler took the stand and virtually admitted his guilt, admitting many facts which made it unnecessary to otherwise prove, so there was little or no question about his being guilty of the offense with which charged. He admitted the kidnapping and the killing of his victim. From the fact that the jury were permitted to have the fingerprint card in the jury room, on the back of which was Dressler's criminal history, it could not be ascertained whether the jury convicted him and recommended the extreme penalty of death for the offense for which he was tried, or whether the jury was influenced, after they decided to convict him, to recommend that he be put to death because of his previous criminal record. In that case the Government contended that the jury verdict could not be impeached, and that only where it could be shown that there was an abuse of discretion in denying a motion for a new trial could the verdict of guilty and sentence imposed be set aside. However, because the Court believed, or that there was room for belief—though not sure one way or the other—that the extraneous influence of Dressler's criminal history may have caused the jury not only to convict but to ask that death be imposed, it very readily, and very properly, set aside the conviction and sentence. The ends justified the means. Just as in this case, whatever action this Court deems fit or proper to correct the wrongful conviction and sentence of petitioner would be justified.

The Dressler case is directly in point. Quotations from that case follow:

“If the nature of extraneous information or *influence* which is introduced into the presence of the jury is such that it would be prejudicial if acted upon, *the*

*aggrieved party is not required to disclose by the affidavits or testimony that the jurors actually considered it. If the only question before the jury had been that of guilt or innocence, we believe that the defendant's confession and his own testimony on the witness stand were sufficient to render harmless the consideration of the information furnished by the 'criminal history' * * *.*

*"But different considerations are involved in appraising the effect of the 'criminal history' upon the minds of the jurors while they were engaged in deciding whether the death penalty should be recorded. The decision of that question called for an exercise of discretion and an evaluation of any mitigating circumstances. * * * Under the law the jury was permitted to consider only the evidence relating to the crime with which defendant was charged. But in addition to such permissible evidence, the jury had before it, without limitation of its use, information which strongly indicated that the defendant was a hardened habitual criminal.*

"If the 'criminal history' made any impression whatever upon the jurors, such impression must have been unfavorable to defendant's cause. And the probability that such information did substantially influence the jury is increased by the fact that the jury must have assumed that it was perfectly proper for it to give weight to the 'criminal history' of the defendant in deciding whether to recommend the death penalty.

"We do not find anything in the record which reasonably can be said to mitigate any prejudicial effect which might have been occasioned by the jury's consideration of the 'criminal history.'

"The defendant, both in his confession and in his testimony before the jury described several offenses committed by him during the course of his flight from prison and up to the time of the death of Hamilton, but the fact that there is before a jury legitimate evidence of the commission of offenses by the defendant other

than the one for which he is on trial ordinarily would increase the chance of prejudice to the cause of the defendant from permitting illegitimate evidence of still other crimes to go to the jury. *Furthermore, reviewing courts frequently have emphasized the duty of trial courts to exercise special caution to keep from the minds of jurors extraneous influences during the trial of a defendant who is charged with a crime that is particularly shocking.*"

Also this:

"The Government urges that this Court must assume that there was no prejudice since the defendant makes no affirmative showing that the jury was influenced adversely to defendant's cause. * * * In *Little v. United States* the following statement of the court makes the governing rule clear: '** * * where error occurs which, within the range of a reasonable possibility, may have affected the verdict of a jury, appellant is not required to explore the minds of the jurors in an effort to prove that it did in fact influence their verdict.*' * * * The record failing affirmatively to disclose that no prejudice did result, the verdict cannot stand.' * * * Defendant makes a showing of prejudice to his substantial rights when he shows to this Court that the 'criminal history' of the defendant was sent to the jury room for consideration by the jury."

Also:

"The generally accepted rule that a denial of a motion for a new trial is not assignable as error on appeal has been qualified by the statement, and holding, that the ruling will not be disturbed unless it appears that there was no abuse of discretion. This Court approved such limitations in *U. S. v. Porter*; and in *Starr v. Superheater Co.* held that the verdict should have been set aside and that there was an abuse of discretion in not granting a motion for a new trial in that case. We think such limitation is recognized

by the Supreme Court in *Fairmont Glass Works v. Cub Fork Coal Co*, 287 U. S. 474, 53 S. Ct. 252."

Also:

"On the basis of the record before us, it is impossible to say that the jury was not substantially influenced by the information which was improperly before it in arriving at its conclusion to recommend the death penalty. We conclude that the District Court should have set aside the verdict and granted a new trial."

That case is absolutely on all fours with the situation in this petitioner's case, for it very appropriately discloses that the aggrieved party is not required to disclose by affidavits that jurors considered the extraneous matter; that if such extraneous matter made any impression it must have been unfavorable to defendant's cause; that the *probability* that it influenced the jury is borne out by the result of their verdict; that it is the duty of trial courts to be especially cautious to keep from the minds of jurors such influences during the trial of a defendant charged with a shocking crime; that where error occurs which may, within the range of possibility, have affected the verdict of a jury, appellant is not required to explore the minds of jurors to prove that it did in fact influence their verdict; that when it is impossible to say that the jury was not substantially influenced by such improper matter in arriving at its conclusion to recommend the death penalty, it was an abuse of the trial court's discretion to refuse to grant a new trial. The above propositions were *negatively* stated, such as "when it is impossible to say the jury was not substantially influenced," etc.

In the case of petitioner it affirmatively appears from the statement of the trial court itself that the jury recom-

mended the death penalty because of an extraneous influence. It was not necessary for petitioner to show by affidavits or otherwise that such influence may have caused the jury to recommend the infliction of the death penalty. The trial court itself has supplied, by its statements hereinbefore referred to and quoted, that "reasonable possibility" which may have affected the verdict of the jury referred to in the Dressler case which makes it the duty of the trial court to set aside the verdict. Rather than exercising special caution to keep from the minds of the jurors in petitioner's case such extraneous influences as referred to in the Dressler case, the trial court exerted no effort whatsoever to keep them away, neither from the testimony nor from the objectionable argument of the district attorney. Petitioner makes a showing of prejudice by the trial court's own statement.

It is beyond a probability or possibility that in this case the jurors may have been influenced by such unwholesome influences. The trial court is on record as affirmatively stating it believed such extraneous influences caused them to recommend the death penalty. Petitioner submits that it was the solemn duty of the trial court to have taken such steps as were necessary to have prevented such unwarranted miscarriage of justice and denial to petitioner of due process of law. Petitioner's case most assuredly comes within the rule of *U. S. v. Atkinson*, 297 U. S. 157, 160, 56 S. Ct. 391, 392, that in exceptional circumstances, in criminal cases, Appellate Courts may, of their own motion, notice errors if such errors are obvious or otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings.

Other Cases in Point.

In *Thornhill v. State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, this Court said that the finding against the petitioner was a general one; that it did not specify the testimony upon which it rested; that it was unnecessary to go behind the statutes or the complaint to determine whether the evidence could ever support a conviction founded upon different and more precise charges, adding that "conviction upon a charge not made would be sheer denial of due process."

Of like effect is *Stromberg v. California*, 283 U. S. 359; 51 S. Ct. 532.

In *Williams v. State of North Carolina*, 317 U. S. 267, 63 S. Ct. 207, this was said:

"* * * if one of the grounds for conviction is invalid * * * judgment cannot be sustained."

Other Offenses and the Smearing of Women.

Petitioner submits that the trial court erred, over objection, to which exception was taken, in admitting evidence of prior crimes by petitioner for which he was indicted, or, if not indicted with which he was alleged to have committed; and erred in allowing petitioner to be interrogated on the subject of his having smeared, or threatened to smear, other women in the State of Tennessee and his home city of Nashville. Petitioner contends that he was entitled to be tried upon competent evidence and only for the offense with which charged, and that his cross-examination should have been restricted to matters brought out on direct examination pertaining to the offense charged in the indictment. The Dressler case, already

cited, is excellent authority on this subject. The grandfather of authority seems to be that of *Boyd v. U. S.*, 12 S. Ct. 292, 35 L. Ed. 1077, which has this to say:

"However depraved in character, and however full of crime their past lives may have been, the defendants were entitled to be tried upon competent evidence, and only for the offense charged."

Upon the propriety of improper cross-examination, the case of *Harold v. Territory of Oklahoma*, 169 Fed. 47, is authority for the rule that when a defendant testifies he waives the privilege of silence and subjects himself to cross-examination and impeachment to the same extent as any other witness, but no farther, and that he may not be cross-examined upon other subjects and that it may not be developed on cross-examination what could not properly have been introduced by the prosecution in the presentation of its case.

It was plain error to allow the Government to get into evidence by the cross-examination of petitioner the facts that he had been charged with, though not convicted of, other offenses and that petitioner had threatened to smear other women if they dared to appear against him to prosecute some of the prior offenses with which petitioner had been charged. It may be added by way of explanation that the Government failed to produce or introduce one single one of the women whom it was claimed he threatened to smear.

III.

Involuntary Admissions Improperly Admitted.

While petitioner was undergoing cross-examination at the hands of the district attorney, he was asked whether he had written two letters under date of July 1, 1936, at a time when he was in the Federal Penitentiary at Leavenworth, Kansas, one of which was addressed to F. B. I. Agent Smith and the other addressed to Mr. Bates, the Director of Federal Prisons. Petitioner's counsel made strenuous objection to the introduction of such letters, in the nature of admissions and confessions, upon the grounds, and petitioner so testified, that they were involuntary because petitioner had been induced to write them under the hope, promise, inducement and persuasion of the prison warden that if he would write them petitioner would be taken out of isolation in the penitentiary and permitted the regular run of the penitentiary, and that so long as petitioner claimed to be insane he would be ineligible for parole. The further point was made by petitioner's counsel that the question of their voluntariness should be determined by the Court out of the hearing and presence of the jury. The trial court overruled objections and admitted them in evidence. (R. 955-960)

Not one, single word of testimony was introduced by the Government to refute petitioner's assertion that he was thus induced to write them and that they were wholly involuntary. Nevertheless, the Sixth Circuit in its opinion affirming held that they were written without the slightest duress or constraint and were wholly voluntary. How it could so decide without any testimony contradictory to that of appellant is not shown.

At the time petitioner wrote those letters he was on the service of a life sentence which had just recently been illegally imposed upon him (50 F. Supp. 774) for the same offense for which he now stands convicted. He was then in the Federal Penitentiary at Leavenworth. He was a stranger in strange surroundings. He was in prison isolation, segregated from the rest of the prisoners. He had been twice adjudicated insane, and had not been restored. He was still presumptively insane, and incapable of making a rational or voluntary admission. He says he was induced to write Prison Director Bates and to claim that he was not insane and that his previous insanity adjudications were the result of his father imposing upon his friends to avoid prosecution for some offenses against the State of Tennessee. It is rather remarkable, even absurd, that by having petitioner write that he was not insane and had never been insane the Government's own agent, the warden at Leavenworth, intended by this process to substitute and undo the force and effect of the expert opinions of the Tennessee psychiatrists appointed by the courts to examine him and the force and effect of the verdict of two Tennessee juries impaneled to try the issue of petitioner's insanity, and which had unanimously declared petitioner to be wholly insane.

Petitioner, serving an illegally imposed life sentence, then insane, having no advice of counsel, and being confronted with the choice of having to remain during the course of his life sentence in isolation, and remaining ineligible for parole so long as he claimed insanity, or given the alternate of asserting, under promise and hope, that he was not insane and had never been, did as the government agent commanded and wrote that he was not insane and had never been.

Insanity is a defense under the general plea of not guilty. It is every bit as much a defense as not guilty. The result of being compelled to admit, under duress and inducement, a disavowal of insanity is the same as being compelled to admit guilt under like duress or inducement.

The facts surrounding the manner in which petitioner's involuntary admissions were procured and the manner in which they were gotten into the evidence, calls for the application of the doctrine right recently laid down in *Feldman v. U. S.*, 64 S. Ct. 1082, decided May 29, 1944, to the effect that when a representative of the United States is a participant in the extortion of evidence or in its illicit acquisition, he is charged with exercising the authority of the United States, and evidence thus procured is inadmissible and vitiates a conviction.

And right here is a most excellent opportunity to further apply the principles laid down in *McNabb v. United States*, 318 U. S. 332, 63 S. Ct. 608, that a conviction resting on evidence secured through flagrant disregard of the rights of accused persons, and who have been held incommunicado without advice of friends or counsel cannot be allowed to stand, and that it is the duty of the trial court to entertain a motion for the exclusion of such evidence and to hold a hearing, away from the jury, to determine whether such a motion should be granted or denied. The case of *Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524, and many others, is of like effect.

The case of *Ashcraft v. Tennessee*, 64 S. Ct. 921, is of like effect, and specifically holds that the Supreme Court adheres to its opinion in the *McNabb* case.

Toosisgah v. United States (10th Cir.), 137 F. 2d 713, is authority for the rule that where it appears that evidence in the form of a confession has been obtained

illegally, it becomes the duty of the trial court to entertain a motion to exclude it and to conduct a hearing out of the presence of jurors; further stating that if the Court elects to determine the admissibility of such evidence in the presence of the jury, it does so at the risk of committing reversible error.

Harrold v. Territory of Oklahoma, 169 Fed. 47, 51, is leading authority for the rule that an accused person may not be impeached or contradicted by *incompetent* proof of contradictory statements, nor by proof of incompetent contradictory statements, and furthermore that one accused of crime may not be compelled to be a witness against himself concerning matters which are incompetent or not properly in issue or the subject of cross-examination.

In *Tuttle v. People*, 79 P. 1035, it appeared that Tuttle's statement did not amount to a confession or admission of guilt, but related principally to his whereabouts at the time the homicide was committed. It was said in that case that the constitutional provision was not intended to merely protect a party from being compelled to make confessions of guilt, but protects him from being compelled to furnish *a single link* in a chain of evidence by which conviction of a criminal offense might be secured.

In *People v. Shroyer*, 168 N. E. 336, 336 Ill. 324, it appeared that Shroyer had been adjudicated insane. The tendered offer of testimony of three witnesses to an alleged confession made in their presence was held inadmissible because made at a time when the presumption of insanity prevailed. After quoting *State v. Campbell*, 257 S. W. 131, 133, it held that one presumptively insane is not presumed to be capable of knowing his constitutional right and the confession or admission of such a person is an absolute nullity.

It is important to remember that when petitioner wrote the complained of admissions he was presumptively insane and being illegally detained upon an unlawful sentence. He was as much entitled to advice of counsel when he made those admissions as if he had just been apprehended and been awaiting to be arraigned upon the charge against him. From a legal and constitutional standpoint, at least, the situation is identical.

If at the time petitioner had the legal capacity, considering his prior adjudications of insanity, to make a *voluntary* disclaimer of insanity it would have amounted to a voluntary acknowledgment of capacity to commit the offense with which charged. Under those circumstances that would be tantamount to a voluntary admission that he had no defense to make based on insanity.

As heretofore pointed out, insanity is as much a defense as a plea of not guilty.

Insanity was interposed at the trial as one of petitioner's main defenses. If, therefore, petitioner was induced to make an involuntary admission that he had capacity to commit the offense with which he had been charged, the situation is no different than if he had been induced to make an involuntary admission of guilt, because insanity and a plea of not guilty stand on equal footings as defenses to crimes charged. The net result, therefore, is that the involuntary admission of capacity to commit the offense obtained by inducement, while petitioner was in custody and without counsel, introduced by way of cross-examination, impeachment of petitioner without having the issue of its voluntariness determined out of the presence and hearing of the jury amounted to a denial to petitioner of due process of law, and calls for the further application of the rule in the McNabb case and for the application of

the rule laid down in the case of *Johnson v. Zerbst*, 304 U. S. 458, 58 S. Ct. 1019, that one charged with crime and denied the aid of counsel may be put on trial without a proper charge and convicted upon incompetent or otherwise inadmissible evidence. "HE REQUIRES THE GUIDING HAND OF COUNSEL AT EVERY STEP IN THE PROCEEDINGS AGAINST HIM."

Courts take judicial knowledge of decisions of other Federal Courts and take judicial knowledge of the records and proceedings of their own particular courts. The District Court should have taken judicial knowledge that petitioner had been released on *habeas corpus* by the District Circuit at San Francisco because he had no counsel and because he had been previously adjudicated insane and could not enter a valid plea, *Robinson v. Johnston*, 50 F. Supp. 774. Those same inhibitions preventing his entering a valid plea would vitiate an involuntary admission made within about a month and a half from the time the invalid plea was accepted from petitioner in the same District Court in which he later was given the death sentence. The District Court therefore had ample knowledge of petitioner's incapacity to make admissions, which coupled with their involuntariness, made them wholly inadmissible for any purpose whatsoever.

For the reasons above advanced, petitioner unquestionably has been denied due process of law.

IV.

The Lindbergh Act Is Unconstitutional.

It is the contention that the statute aforesaid (Section 408a, Title 18, U. S. C. A.), known as the Lindbergh Act, is unconstitutional. The statute, as amended, is made a part of this argument by reference. It denounces as a crime the knowingly *transportation* in interstate commerce of any person who shall have been unlawfully seized, kidnaped, etc., and held for ransom or reward and provides that upon conviction the punishment shall be by death, if the verdict of the jury shall so recommend. The statute contains this further restrictive, qualifying provision and condition:

“ * * * provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed.”

The original Act was passed on June 22, 1932. It was amended in 1934.

The Fifth Amendment to the Constitution guarantees that no person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty or property, without due process of law; and the Sixth Amendment is a guarantee that in all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation.

In *Marbury v. Madison*, 1 Cranch, 137, 2 L. Ed. 60, it was said that a law that is repugnant to the Constitution is void.

It is the rule also that extraordinary conditions do not create or enlarge constitutional powers, and that the opin-

ions of lawmakers and courts that a statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry of whether or not a law is constitutional. See *Schechter Poultry Corporation v. U. S.*, 295 U. S. 495, 55 S. Ct. 837; and *Carter v. Carter Coal Company*, 298 U. S. 238, 56 S. Ct. 855.

The statute in question is a new one, which creates a new offense. It is petitioner's contention that the aforesaid language of the "unharméd" proviso invalidates the statute of which it is a part.

The death penalty may not be imposed unless the jury recommend it. From what is known of the background of the Act, Congress intended, as an inducement to kidnapers, that they should not be put to death unless they, themselves, killed the victim or inflicted upon the victim permanent injuries. In offering as an inducement to kidnapers freedom from the death penalty, Congress resorted to the use of an awkward, clumsy, and unascertainable expression in an attempt to convey its meaning by adding the proviso that the sentence of death shall not be imposed by the Court if, prior to its imposition, the kidnaped person has been liberated *unharméd*. The words "liberated unharméd" have a confused, unascertainable meaning. The harm, or freedom from harm, may relate to any time during the period of captivity; it may relate to the moment of release of the victim; and it may have been intended by Congress to relate to the time of the trial, in view of the language that the death penalty should not be imposed by the Court if, "*prior to its imposition*," the kidnaped person has been liberated unharméd.

With at least three possible interpretations that could be placed on the words used by Congress, the question is:

How can it be determined with any degree of certainty just what Congress meant?

The term "unharmed," so far as known, has never been contained in any statute. It is a generic term. There is no criterion to follow in the construction or interpretation of the word. The statute which contains it is a new penal statute. Congress had use of the whole of the English language to define the term and to designate the time intended as to when the "harm" or freedom from harm should relate. It is significant that Congress devoted Section 408b of Title 18, U. S. C. A., to the definition of "interstate or foreign commerce," in spite of the fact that those terms have a generally understood and accepted meaning, but that it did not define the term "unharmed." Words and Phrases and law and other dictionaries do not contain a definition of the term. What might to one person and different courts mean "unharmed" or "harmed" might to other persons or to other courts have an entirely different meaning. There is no standard or guide fixed by the Legislature by which to ascertain the meaning of the word or the intention of the Legislature. It is impossible to ascertain whether Congress intended that a simple pin scratch upon the body would amount to "harm," or whether serious, painful and permanent injuries were intended. The statute is silent as to whether it meant bodily injuries, mental disturbance, fright, anxiety or other types of harm or injuries. Instances can be imagined when a kidnaped victim could undergo no infliction of bodily injuries and yet endure much mental anguish and fright and yet not be "harmed" in the sense of having had bodily injuries inflicted. The fact that confusion arises in the attempt to interpret what Congress meant makes the statute and the proviso repugnant to the Constitution.

If Congress intended to induce the kidnaper not to kill or maim the victim by withholding the infliction of the death penalty if the kidnaper refrained from so doing, that inducement would be wholly nullified by the imposition of the death penalty upon kidnappers who but slightly injured the victim. If such be the case, there would be no incentive for the kidnaper to refrain from killing, for he would be in no worse position if he killed than if he but slightly injured the victim. In fact, he would be worse off, for by failing to kill the victim the kidnaper would run the risk of being confronted in court by a live, talking victim. Congress assuredly did not intend for such victims to be killed.

In the case of petitioner, his alleged victim, Mrs. Stoll, was in court and testified for the Government as its chief prosecuting witness. Neither she nor any other witness uttered one word to indicate that she was then suffering from any injury or the result of any injury claimed to have been inflicted upon her by petitioner. Did the statute intend that petitioner should be sentenced to death in the absence of any showing that his alleged victim was permanently injured?

The time of the "harm" or freedom from harm and degree or extent of harm present questions of the intention of the Legislature.

It is the rule that no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes, and that terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, and that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess

at its meaning and differ as to its application violates the first essential of due process of law. And the rule is also that such important elements cannot be left to conjecture, or be supplied by either the Court or the jury; that the crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue, and penal statutes prohibiting the doing of certain things and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another. Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward, clumsy expression, or language wanting in precision, to the intent of the Legislature. For the vice lies in the impossibility of ascertaining, by any reasonable test, that the Legislature meant one thing rather than another. A law which licenses the jury to create its own standard in each case is repugnant to the Constitution. The exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all violates the due process of law clause.

In *Lanzetta v. State of New Jersey*, 306 U. S. 451, 59 S. Ct. 618, there was a conviction for violation of a statute making it a penal offense to be a gangster or member of a gang. That case was reversed because of the uncertainty of the term "gang."

The case of *Connally v. General Construction Company*, 269 U. S. 385, 46 S. Ct. 126, involved statutory provisions which contained no ascertainable standard of guilt, and the statute was held invalid.

In *United States v. Capital Traction Company*, 34 App. D. C. 592, a statute making it an offense for any street

railway company to run an insufficient number of cars to accommodate passengers "without crowding" was held to be void for uncertainty, because there was no guide for the Court or jury to ascertain what constituted a crowded car.

Stromberg v. People of State of California, 283 U. S. 359, 51 S. Ct. 532, is of like effect.

Herndon v. Lowry, 301 U. S. 242, 57 S. Ct. 732, involved an uncertain statute, and it was condemned as being repugnant to the Constitution.

The case of *United States v. L. Cohen Grocery Company*, 255 U. S. 81, 41 S. Ct. 298, involved a statute using the terms "unjust and unreasonable." It was held in that case that no reasonable standard of guilt was prescribed.

In *Champlin Refining Co. v. Corporation Commission*, 286 U. S. 210, 52 S. Ct. 559, the question for determination was whether the refinery had committed "waste" in violation of the statute. Although the statute defined the term, it was held to be indefinite and uncertain and therefore invalid.

Weeds, Incorporated, v. United States, 41 S. Ct. 306, involved the same terms as in the Cohen Grocery Company. A demurrer to the indictment was sustained because the statute was held to be repugnant.

Petitioner submits that the statute in question, known as the Lindbergh Act, falls squarely within the line of decisions in the cases herein referred to, and that it is unconstitutional because indefinite and because it prescribes no ascertainable standard of conduct by which to be governed.

The opinion of the Court below holds, however, that the proviso of the statute in question is the punishment provided for the commission of the offense denounced and that petitioner is not entitled to be advised of the punish-

ment that may be inflicted. That is unsound. The proviso is not a part of the punishment. It excepts something from the operative effect of the statute and qualifies and restrains the generality of the substantive enactment to which it is attached. It is a restriction upon the substantive enactment to which it is attached. Therefore, it is as much a part of the offense as any other portion of the statute denouncing the crime. It is so attached to the substantive enactment as to make it reasonably sure that the Legislature would not have enacted the other portions with the questioned portion omitted.

Therefore, if this statute in question, or any proviso is invalid, then the entire statute must be held inoperative. Such were the rulings in *Connolly v. Union Sewer Pipe Company*, 22 S. Ct. 431, 184 U. S. 540; *Butts v. Merchants and Miners Transportation Company*, 230 U. S. 126, 33 S. Ct. 964; *McFarland v. American Sugar Refining Company*, 36 S. Ct. 498, p. 501.

In the case of *Weems v. United States*, 30 S. Ct. 544, 555, it was contended by the Government that the provision relating to the punishment was separable from the accessory punishment. That contention was rejected, and the Court held that the statute was put into force with all its provisions dependent, and that they could not be declared to be separable.

Courts incline toward treating a penal statute as void in its entirety whenever one section or clause is clearly unconstitutional. Section 166, Const. Law, American Jurisprudence.

Petitioner submits that the proviso in question and the whole of the statute of which it is a part are invalid for repugnancy to the Constitution and that because petitioner was tried and convicted under an invalid statute he has been denied due process of law.

V.

The Indictment Under Which Petitioner Was Tried and Convicted is Demurrable Because It Fails to Allege Essential Particulars of the Offense: Because It is Duplicitous: Because It Contains Constructive Offenses: and Because It Attempts to Allege Facts in Aggravation of the Offense Without Particularizing.

The Second Count of the indictment¹⁶ attempted to charge petitioner, somewhat in the language of the statute, with the unlawful transportation in interstate commerce of Mrs. Alice Stoll after she had been kidnaped and held for ransom, and that he did not liberate her unharmed. It has already been demonstrated in Point IV of this argument that the proviso containing the word "unharmed" is indefinite and ambiguous. The bare, naked assertion that petitioner failed to liberate the victim un-

¹⁶SECOND COUNT.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present:

That heretofore, to-wit, on or about the 10th day of October, in the year of our Lord 1934, in Jefferson County, Kentucky, in said district and within the jurisdiction of this Court, Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., late of said district unlawfully did then and there knowingly transport and cause to be transported and aid and abet each other in transporting in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom, and said person was not a minor and had not been seized and carried away by her parents, and did not liberate said person unharmed; that is to say, at said time and place the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., unlawfully did then and there transport and cause to be transported and aid and abet each other in transporting in interstate commerce, to-wit, in commerce from Louisville, in the State of Kentucky to Indianapolis, in the State of Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnaped, abducted and carried away from her home by the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., and held the said Mrs. Alice Stoll for ransom or reward, and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed.

harmed is wholly insufficient. The Sixth Amendment guarantees that the accused shall enjoy the right to be informed of the nature and cause of the accusation. An omission to charge with particularity matters of substance is not aided or cured by the verdict. Petitioner, under the Sixth Amendment, was entitled to be furnished with the particularized facts in the indictment so as to apprise him of the nature and cause of the accusation, and to enable him to prepare a proper defense.

Petitioner was entitled to have set forth in the indictment all the necessary ingredients of the offense. The omission of any fact or circumstance necessary to constitute the offense is fatal.

The indictment in question wholly failed to set forth any facts or circumstances from which petitioner would know or be apprised what constituted a "release unharmed" of the victim. The words of the statute were insufficient in and of themselves to give that information. The indictment failed to specify the details of the alleged failure to release unharmed.

Petitioner interposed a demurrer to the indictment (R. 33), asserting that it did not contain sufficient allegations to charge him with the commission of an offense; that it was indefinite, and that it was duplicitous because containing more than one offense in the second count.

The allegation in the indictment that petitioner did not release unharmed the victim amounts to nothing more than a conclusion of the pleader, thus making the indictment defective. Under the language of that allegation petitioner would have no way of knowing what proof on that question he would be required to meet. Therefore, he could not properly prepare a defense. The indictment wholly fails to specify the nature, degree, or extent of the freedom

from harm alleged. The case of *United States v. Carll*, 105 U. S. 611; 26 L. Ed. 1135, well illustrates the point. This was said:

“In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the statute, unless those words of themselves fully, directly and expressly without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished, and the fact that the statute in question, read in the light of the common law, and of other statutes on the like matter, enables the court to infer the intent of the Legislature does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent.”

Without the accompaniment of words descriptive of the harmed condition, or freedom from harm, it was merely a conclusion to charge that she was not released unharmed.

A case further illustrative of the point made is that of *Commonwealth v. White* (Ky.), 109 S. W. 324, 33 Ky. L. R. 70. The indictment in that case was drawn in the exact language of the statute denouncing as an offense the assaulting of another with a deadly weapon. The indictment was held defective because it failed to describe the instrument claimed to be a deadly weapon, the opinion adding that it might have been a dirk, a sword or a heavy, murderous bludgeon, and stating further that the prosecution could not show in evidence that the deadly weapon was a 45-caliber pistol. It added that such an instrument is a deadly weapon, but that the defendant should have been informed of the fact that the Commonwealth would attempt to prove that defendant used such a weapon.

Harris v. United States, 104 F. 2d 41, referred with with approval to the Carll case and to the case of *United*

States v. Hess, 8 S. Ct. 571. The Harris case is authority for the rule that, while the strict requirements and formalities of criminal pleading under the common-law rules have been modified by modern practice, this does not mean that matters of *substance* may be omitted from the allegations of an indictment.

United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588, holds that any omission to set out in an indictment all necessary ingredients cannot be supplied by intendment or implication, and that the charge must be made directly and not inferentially by way of recital.

Of like effect is *Foster v. United States*, 253 Fed. 481, which adds that:

“A bill of particulars could not avail to cure the defect of the indictment. A bill of particulars may be ordered by the court in its discretion * * * It does not constitute a part of the record, and it is not subject to demurrer. Not having been made by a grand jury on oath, it cannot cure the omission of material averments from an indictment, and it cannot ‘give life to what was dead when it left the grand jury’ (citing cases).”

Petitioner submits that the indictment in this case falls far short of the requirements; that it is demurrable, and that his prosecution under it amounted to a denial to him of due process of law.

Facts in Aggravation.

There is another reason why the demurrer to the indictment should have been sustained. By incorporating in the indictment words to the effect that the victim was not released unharmed, there was an attempt to aggravate the offense attempted to be charged and the punishment upon

conviction could be increased from a maximum of life imprisonment to one of death. It is the rule of indictment pleading that when the indictment attempts to charge an offense, the punishment upon conviction for which may be aggravated, the facts constituting such aggravation of the crime as will increase the statutory punishment *must* be plainly charged or they are not confessed by a plea or established by a verdict of guilty.

Petitioner, under the due process clause, was entitled to have alleged in the indictment such particularized facts as would increase the statutory punishment. The indictment in this case is completely devoid of such essential, enumerated facts as would increase the punishment up to a maximum of death.

Mr. Bishop, on Criminal Law, 1 Bishop's Cr. Law, Section 601, says that:

“* * * to punish one for all of a crime where only a part of it is charged is to punish him without accusation.”

That quotation is contained in the case of *Aderhold v. Pace*, 65 F. 2d 790, which had for consideration the conviction under an indictment which charged unlawful selling of liquor but without alleging the quantity sold. There were different punishments provided by the statute, depending upon the quantity of liquor sold. Upon a writ of *habeas corpus*, the Court held that the sentence in excess of that prescribed for the lesser offense was void because the indictment did not specify the amount sold.

In *Meyers v. United States*, 116 F. 2d 601, Meyers pleaded guilty to an indictment charging an offense of attempted robbery of a bank and was sentenced and sent to Alcatraz Prison. Later it was contended by him that the

indictment did not set forth the aggravated offense. From an adverse decision he appealed, and the Circuit Court, after pointing out that the indictment failed to include any charge of the aggravated offense, said:

"The facts constituting such aggravation of a crime as will increase the statutory punishment must be plainly charged or they are not confessed by a plea or established by a verdict of guilty."

See *Goodman v. State* (Texas), 172 S. W. 2d 94, wherein, in speaking of the insufficiency of the indictment, it was said:

"The conclusion is here reached that the information fails to allege the constituent elements necessary to constitute the offense of aggravated assault, and that the judgment of the trial court should be reversed, and the prosecution dismissed."

Applying those rules to the instant indictment, it is readily observable that this indictment miserably fails to set forth any particularized facts whatsoever by which petitioner could be apprised of what the prosecution intended to prove by way of aggravation of the offense charged. The generic term of "unharmd," or charge "and did not release her unharmd" are wholly inadequate and insufficient to admit of increasing the punishment to death. Those terms failed to tell petitioner what facts in aggravation of the offense he would be called upon to meet. He could not possibly prepare a defense thereto. This is but one more instance of denial to him of due process of law.

Duplicity.

Duplicity consists in charging more than one offense in the same count of an indictment. One of the tests for determining duplicity is whether different punishments are provided for the offenses. Punishment up to life imprisonment is provided for the offense of transporting a kidnaped person in interstate commerce. The death penalty is provided, the jury recommending, for failing to release unharmed the kidnaped person. The opinion of the court below holds that "Appellant might have been convicted without any showing that Mrs. Stoll was liberated at all"; from which it is obvious that the punishment provided for merely transporting a kidnaped person is different from failing to release unharmed the kidnaped person. The transaction of transporting a kidnaped person is in no sense continuous with the failure to release unharmed the kidnaped victim. In the instant case it was alleged that petitioner transported the victim on October 10, 1934, from Louisville to Indianapolis. The time of the release of the victim is not alleged. The proof however established that date to be October 16, 1934. The point is, that the alleged transportation and the failure to release unharmed was broken by an interval of some six or seven days. The two offenses may not be said to be continuous. Yet, even if they were, they are distinct offenses for which different punishments are provided, and the indictment is duplicitous in charging in the same count the two distinct offenses.

In *Blockburger v. United States*, 234 U. S. 299, 52 S. Ct., the indictment contained five counts and charged a sale in each count of morphine to the same purchaser. The

contention was made that, upon the facts, the two sales charged in the second and third counts as having been made to the same person constituted a single offense. The Court rejected that contention by holding that the sales charged in the second and third counts, although made to the same person, were distinct and separate sales made at different times.

In *Schultz v. Zerbst*, 73 F. 2d 668 (10th Circuit), it was said that the test to be applied to determine whether there are two offenses, is whether each requires proof of a fact which the other does not, citing the Blockburger case. In the simple offense of transporting a kidnaped person in interstate commerce, it would not require any proof of the fact that the kidnaper failed to release the victim unharmed. So, the application of the test demonstrates that there were two distinct offenses alleged in Count Two of the indictment.

In *Creel v. United States*, 21 F. 2d 690 (8th Circuit), the indictment charged defendant with *selling* and *furnishing* a quantity of intoxicating liquor. The opinion recites that the allegations did not set forth different modes of committing the same offense, but set forth the commission of two different offenses, saying that of course it was possible to furnish without selling, and *vice versa*. The Court held that there was a joinder of distinct offenses in each count of the indictment and that the demurrer thereto should have been sustained.

In *Albrecht v. United States*, 273 U. S. 1, 47 S. Ct. 250, it was contended that there was a double punishment because the liquor which the defendants were convicted for having sold was the same that they were convicted for having possessed. But the opinion pointed out that possessing and selling are distinct offenses, and that the fact

that the person sells the liquor which he possessed does not render the possession and the sale a single offense, adding that there was nothing in the Constitution preventing Congress from punishing separately each step leading to the consummation of a transaction and punishing also the completed transaction, which but emphasizes the contention of petitioner that transportation of the kidnaped victim was separate from the failure to release unharmed the kidnaped victim.

Of like effect is *U. S. v. Hopkins*, 290 F. 619, in which case the first count of the indictment alleged that the defendant did "unlawfully * * * take, steal, carry away and conceal and did aid, assist, and abet in taking, stealing, carrying away and concealing," the particular property mentioned in the indictment. The court held that the first count attempted to charge all four of those offenses and to add to them another offense of aiding, assisting and abetting in each of the four, and that the demurrer thereto should have been sustained.

Petitioner vigorously insists that the indictment in this case is bad because of duplicity and that his demurrer thereto should have been sustained.

Indictment Contains Constructive Offense.

There is another reason why the demurrer to the indictment should have been sustained. The gists of the offenses in the aforesaid statute are the transportation in interstate commerce of a kidnaped person and the failure to release unharmed the kidnaped person. The indictment in the instant case charges a constructive offense of assault and battery in these words:

"and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed,"

The Lindbergh Act denounces no offense of that character. It is plain that such allegations do not constitute an element or ingredient of the offenses denounced in Section 408a, Title 18, U. S. C. A. It is equally apparent that the indictment containing such language is fatally defective because containing a constructive offense.

In *Fasulo v. United States*, 272 U. S. 620, 47 S. Ct. 200, Fasulo was indicted, with others, and convicted of a conspiracy to violate the law denouncing the fraudulent obtaining of money by use of the mails. The question was whether the use of the mails for obtaining money by means of threats of murder or bodily harm was within the purview of the statute. The Government contended that all dishonest methods of deprivation by the use of the mails was embraced within the statute. That contention was rejected:

"The words of the Act suggests no intention to include the obtaining of money by threats. There are no constructive offenses; and before one can be punished, it must be shown his case is plainly within the statute."

Of like effect is *United States v. Resnick*, 299 U. S. 207, 57 S. Ct. 126, which said:

"Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used."

United States v. Chase, 135 U. S. 255, 10 S. Ct. 756. The question was whether an act declaring every book, paper, writing, etc., to be unmailable embraced an obscene letter. This was said:

“We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally of susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its context, even though they may involve the same mischief which the statute was designed to suppress.”

See, also, *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37. Likewise, *Karem v. United States*, 121 Fed. 250 (C. C. A. 6th).

In *State v. Mattison*, 100 N. W. 1091, it was revealed that the information purported to charge the crime denounced of shooting with intent to kill, but when framed included also the crime of maiming, on the theory that inasmuch as the crime of maiming resulted from the commission of the shooting, the former could be included in the charge. That opinion said that maiming may, and often does, result from shooting, but that it was a distinct offense, and under no circumstance forming part of the consummated crime of shooting with intent to kill.

It is very clear from the above authorities that the constructive offense of beating, injuring, bruising, etc., contained in the indictment made it invalid, and the demurrer should have been sustained.

Indictment Insufficient as to Time and Place.

The indictment charges that on or about the 10th day of October, 1934, in Jefferson County, Kentucky, in said district, and within the jurisdiction of the Court, the petitioner, with his wife and father did transport Mrs. Stoll in interstate commerce from Louisville to Indianapolis, who had been unlawfully kidnaped and carried away from her home by petitioner, his wife and father. The indictment does *not* allege that she was transported from her *home in Louisville*, nor does it specify the location of her home. It merely alleges that her transportation in interstate commerce occurred after she had been carried from her home, without alleging where her home was located. For aught that appears, her home might have been located on any of the many streets of Louisville, a city well over 350,000 in population, or her home might have been located at any point within the still larger county of Jefferson. The proof later developed that her home actually was on a *farm* located on Lime Kiln Road out in the county, several miles outside the city of Louisville (R. 451-455. Government Exhibit No. 1).

But proof is wholly inadequate to supply deficiency in allegation.

Two Cases in Point.

In *Turk v. United States*, (8th Circuit) 20 F. 2d 129, it was charged in the indictment that:

“ * * * ‘on or about the 25th day of May, 1924, in Oklahoma county in the Western district of the state of Oklahoma and within the jurisdiction of this court, Henry Turk, * * * did then and there knowingly,

willfully and unlawfully have in his possession and under his control intoxicating liquors, to wit, beer,' and in the second count of the information that * * * on or about the 25th day of May, 1924, in Oklahoma county, in the Western District of the state of Oklahoma * * * Henry Turk * * * did then and there knowingly, willfully and unlawfully sell and deliver to Roy Rambo intoxicating liquors, to wit, beer.

"The averment that each of the offenses was committed on the 25th day of May, 1924, gave the defendant no notice of the *time* of its alleged commission for that averment permitted the government to prove each of these offenses at any time within three years prior to the filing of the information. The allegation of *place* was ineffectual because it permitted the government to prove either offenses at *any place* in the Western district of Oklahoma within the jurisdiction of the court. The information contained nothing from which the defendant, who was presumed to be innocent, could derive any notice or knowledge when and where within the jurisdiction of the court or under what circumstances the government intended to try to prove either of these alleged offenses against him. * * * It confines the possible proof of the commission of each of the offenses to no *time* within three years, to no *place* within the jurisdiction of the court, to no identifying circumstances, and a judgment upon it would not protect the defendant against a second prosecution for the commission of the same offense at any *time* within the three years and at any *place* within the jurisdiction of the Court."

The case of *Parton v. United States* (8th Circuit), 20 F. 2d 127, is of the same effect.

VI.

Petitioner Was Entitled to Directed Verdict.. And in no Event Was It Proper to Permit the Jury to Recommend, or for the Court to Inflict, the Death Penalty on Petitioner.

The gravamen of the offense denounced by the statute is the transportation in commerce of a kidnaped person. The proof in this case of beating and injuring the victim was confined to two witnesses, Mrs. Stoll and her maid, Ann Woolet. They each testified that the beating and injuring of Mrs. Stoll occurred in the Stoll home *prior* to her transportation, and *prior* to her being taken in custody. The indictment charges that while in the *custody* of petitioner, his wife and father Mrs. Stoll was beaten and injured. The language of that part of the indictment is as follows:

“* * * and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did then and there, *while the said Mrs. Alice Stoll was in their custody*, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed.”

Laying aside the argument heretofore made that such language charges a constructive offense not within the purview of the statute, the Government's proof wholly failed to establish that the beating and injuring occurred *after* Mrs. Stoll was in the custody of petitioner, his wife and father. Also, the indictment specifically charges that the beating and injuring of Mrs. Stoll occurred while she was in **THEIR** custody, *i. e.*, in the custody of all three

named in the indictment. It never was established by the Government that Mrs. Stoll was ever in the custody of the father of petitioner. The failure to prove that she was in the custody of all three named in the indictment is fatal to the Government's case. The further failure to establish, as charged in the indictment, that the beating and injuring occurred while she was in their custody—the custody of all three—*subsequent* to the kidnaping and transportation in commerce is undeniably a failure to prove, as is absolutely necessary, not one, not some, but each and every element of the offense alleged.

Furthermore, Mrs. Stoll was not asked, nor did she say, nor did any one else say, that the injuries claimed to have been in existence upon her release were injuries inflicted upon her by petitioner, or that her condition upon release was the result of prior injuries inflicted upon her by petitioner. This is another instance of the Government failing to prove an essential element of the offense.

Before petitioner could be convicted, it was absolutely necessary for the Government to adequately prove each and every essential element of the offense which is alleged in the indictment. See *McAfee v. United States*, 105 F. 2d 21.

The Court should have directed a verdict of not guilty for petitioner and dismissed the indictment. Its failure to do so was a substantial, reversible error.

VII.

The Alternate Juror Statute Unconstitutional. Disqualified Jurors Were Allowed to Serve. The Verdict Participated in by an Alternate Juror Denied Petitioner Due Process of Law.

By Section 417a of Title 28, U. S. C., provision is made for the selection of two alternate jurors when it appears that there might be a protracted trial. It was petitioner's constitutional right to a trial by a jury of twelve, as provided by the Sixth Amendment, and by Article II, Sec. 2, Cl. 3, of the Constitution. This question presents an important Federal question and one of public importance which has not, save for the opinion of the Sixth Circuit, been decided, but which should be decided. Petitioner had the constitutional right to a trial by a jury of twelve, no more and no less, and it would appear that this alternate juror statute is wholly unconstitutional and that by the application of its procedure in permitting alternate juror C. E. Miller to serve in the absence of Mrs. Davidson, the regular juror, who was excused because of illness (R. 1054), was a denial to petitioner of due process of law.

Five jurors should have been disqualified for cause from service upon the jury by reason of social, business, personal, professional and religious contacts with Mrs. Stoll and with members of the Stoll, Speed, and Sackett families. The record (pp. 245 to 315) fully establishes that relationship and the incompetency of the five challenged for cause, but which challenges were overruled. Petitioner exercised all of his peremptory challenges and used five of them in challenging those five jurors complained of. Selection of jurors in Federal Courts is gov-

erned by the law of the State in which the trial is held, thus the Kentucky law on the subject controls. In *Hess' Admr. v. L. & N. R. R. Co.*, 249 Ky. 624, 61 S. W. 2d 299, the case was reversed because one of them was administrator of an estate which held stock in the railroad company, a party to the action.

It was said in that case that the law owes to every man one fair trial, and that it can be had only at the hands of a jury whose members are wholly disinterested. Caesar demanded that his wife should not only be virtuous, but beyond suspicion. The law's demand for disinterested jurors affecting life and liberty is no less exacting. Petitioner was denied a fair trial and due process of law by being required to exercise five of his challenges on plainly disqualified jurors. The jury which was selected was biased and partial. The verdict and the trial court's remarks heretofore referred to bear out this assertion, and petitioner did not have a fair trial by an impartial jury.

VIII.

Petitioner Twice Put in Jeopardy for the Same Offense.

Petitioner was illegally sentenced in the District Court for the Western District of Kentucky on May 13, 1936, for the same offense for which he on December 11, 1943, was convicted and for which on December 13, 1943, he was sentenced. He was released on a writ of *habeas corpus* by Judge Roche of the California District Court. (See *Robinson v. Johnston*, 62 S. Ct. 1301; *Robinson v. Johnston*, 50 F. Supp. 774.) Petitioner has thus been twice put in jeopardy for the same offense, which is a denial to him of due process of law. Jeopardy attaches when a person has been placed on trial by the impaneling of a jury or, if the

trial is by the Court, when the trial has begun. Double jeopardy does not depend upon the result of the trial, but upon the fact of trial. And if a court proceeds illegally after a prisoner has been placed in jeopardy, its illegal act can not nullify the jeopardy. See *Ex Parte Lange*, 21 L. Ed. 872; Secs. 241, 243 and 245 of *Corpus Juris Secundum*, "Criminal Law"; and *People v. Warden of Nassau County Jail*, 199 N. E. 647.

CONCLUSION.

Upon the whole case it is submitted that petitioner has been denied due process of law, and that the petition for a writ of certiorari should be granted.

Respectfully submitted,

THOMAS HENRY ROBINSON, JR.,
Pro Se.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.



FILE COPY

No. 514.

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CHARLES ELMORE DROPLEY
CLERK

IN THE
Supreme Court of the United States
October Term, 1944.

THOMAS HENRY ROBINSON, JR., - - Petitioner,

VERSUS

UNITED STATES OF AMERICA, - - Respondent.

BRIEF FOR PETITIONER ON THE QUESTIONS
AND POINTS FOR WHICH WRIT OF
CERTIORARI WAS GRANTED.

THOMAS HENRY ROBINSON, JR., *Pro Se*,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.

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**BRIEF FOR PETITIONER ON THE QUESTIONS
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CERTIORARI WAS GRANTED.**

*To the Chief Justice and Associate Justices of the Supreme
Court of the United States:*

STATEMENT.

On January 15, 1945, this Court granted certiorari limited to the question presented under Point No. 1 of the petition for rehearing and under Question 5 (d) of the petition for certiorari. Point No. 1 of the petition for rehearing is that: "Injuries Inflicted Must be Permanent and be in Evidence at Time Court Imposes Sentence, Else the Death Penalty May Not be Inflicted." Question 5 (d) of the Petition for Writ of Certiorari is: "Whether the

death penalty was intended to be inflicted regardless of the time when inflicted or the degree of injury inflicted.

Petitioner relies upon the facts as summarized in the petition for writ of certiorari. Additional facts will not be restated in this brief except to the extent considered necessary to the argument of the questions and points presented.

ARGUMENT.

Construction of the Statute. Injuries Must Be Permanent and be in Evidence at Time of Imposition of Sentence, Else Death Penalty May Not Be Imposed.

It becomes the province of this Court, in this case, to construe certain phases of the Act of June 22, 1932, Chapter 271, Section 1; 47 Stat. 326, as amended May 18, 1934, c. 301, 48 Stat. 781 (Title 18, Sec. 408a, U. S. C. A.), which is an Act, as amended, known popularly as the "Lindbergh Act."

In construing certain language contained in that Act, resort may be had to the history of the legislation.

The original Act, passed in June, 1932, provided a maximum penalty, upon conviction, of life imprisonment.

The amendment containing the proviso restricting the imposition of the death penalty was Senate Bill No. 2252, 73d Congress, 2d Session. Its legislative history is contained in Volume 78, Part 12, of the Congressional Record. For ready reference the following legislative steps were taken:

S. 2252 reported out of the Committee on Judiciary,
pp. 409-458;

Reported back, p. 5082, with Senate Report 534;

Passed the Senate, p. 5757;
 Referred to the House Committee on Judiciary, p. 2233;
 Reported with amendment, p. 8044;
 Amended and passed the House, p. 8127;
 Senate disagrees to House amendment and asks for conference, pp. 8263-8264;
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 House insists on its amendment and asks for conference, p. 8322;
 Conference Report submitted in the House, p. 8775;
 Agreed to, pages 8855 to 8857;
 Examined and filed, pp. 9006 and 9066;
 Presented to the President, p. 9071;
 Approved, p. 9146.

The Congressional Record discloses that Senators Copeland, Vandenburg and Murphy introduced, simultaneously, Senate Bills Nos. 2246 to 2258, which, among other things, proposed to: Make it a federal offense to flee the State in certain cases; to deny appeals in *habeas corpus* cases; to furnish notice at time of arraignment of intention to use an alibi; authorize consolidation of Governmental agencies such as the Treasury, the Post-office and the Department of Justice; and the last and key bill, regarded so by the Justice Department, was one to regulate commerce in small firearms.

Senate Bill No. 2252, one of the group of 13 bills introduced together, proposed an amendment to the original Lindbergh Act to the effect that an absence of three (3) days of the person seized created a presumption of interstate transportation, subject to being rebutted. Significantly enough, the Senate Bill made no provision for the imposition of the death penalty. See Senate Report No. 534, 73d Congress, 2d Session, March 22, 1934.

This Senate Bill was subsequently referred to the House for its action thereon; then to the House Committee on Judiciary. The House refused to pass the Senate Bill as passed, and instead proposed some amendments thereto, following which the Senate refused to pass it with the House-proposed amendments and the bill was then referred to conference. The House insisted on its amendments. Following conference on the bill, it passed both Houses, and when so passed included the House-proposed amendments.

The report of the Judiciary Committee of the House of Representatives, No. 1457, to accompany this Senate Bill No. 2252, discloses three House-proposed amendments to the Senate Bill. First, to include the words "or otherwise, except in the case of a minor, by a parent thereof." Secondly, to add a provision to the effect that the failure to release the kidnaped person within 7 days should create a presumption that the person had been transported in interstate or foreign commerce.

As to the third amendment, the one in question, the following is taken from the Judiciary Committee Report:

"The third addition to this act is to permit the jury to designate a death penalty for the kidnaper. However, this penalty is not to be imposed by the court if the kidnaped person has been liberated unharmed **PRIOR TO THE IMPOSITION BY THE COURT OF THE SENTENCE.**"

That proposed amendment was subsequently enacted as a component proviso of the statute, and reads as follows:

"provided that the sentence of death shall not be imposed by the court if, *prior to its imposition*, the kidnaped person has been released unharmed."

There were no hearings on the amendments. Therefore, the report of the House Judiciary Committee on the third amendment, which is in question, constitutes about all there is in the way of legislative history concerning this particular amendment and proviso.

It is very clear that Congress intended that the death penalty should be withheld if PRIOR TO THE IMPOSITION BY THE COURT OF THE SENTENCE the kidnapped person has been liberated unharmed.

It is beyond the peradventure of doubt that Congress intended to offer to the kidnaper an inducement, in the form of a withheld death sentence, if the kidnaper would but refrain from action leading to *permanent* injury, permanent captivity, or death of the victim. The District Court, in the Parker case (19 F. Supp. 450) makes it clear that Congress so intended, and that Congress, by such inducement, preferred a *cured and live* victim to a dead or permanently injured one. The congressional preference, therefore, is for a *cured and live* victim as opposed to a *dead or permanently injured* one. Of that there can be no dispute.

The Circuit Court of Appeals' opinion in this same Parker case (103 F. 2d 857) which interprets the lower court's opinion as meaning that the physical condition of the victim at the time of release from captivity governs, even though the kidnaper must postpone the release until the cure is effected, is not only in conflict with the lower court's opinion with which it purports to agree, but likewise does violence to firmly established and well defined rules of statutory construction, and furthermore is entirely out of harmony with, and entirely overlooks, the evident purpose of Congress in making an inducement and withholding the death penalty.

It cannot be denied that one of the primary purposes underlying the congressional inducement held out to the kidnaper was to effect the return of the victim as speedily as possible so as to relieve the anxiety and mental strain of not only the victim but of the family of the victim. If the physical condition of the victim at the moment of release, instead of at the time of imposition by the court of the sentence, should be declared as determinative of whether the death penalty should, or should not, be imposed the kidnaper who may have injured his victim, and who had already collected the ransom demanded, and who would otherwise have no further purpose to serve by a continued detention of the kidnaped person, would then be put to the anomalous and even unwilling, if not burdensome, necessity of further detaining his victim so that a cure might be effected; thus would the kidnaper not only prolong the anxiety of his victim but at the same time increase and prolong the suspense and anxiousness of the victim's family, and also make it necessary for the investigating and law enforcement authorities to unnecessarily and at great cost continue in their search for the kidnaped person; for, if the cure and the death penalty are to be made to depend upon the condition of the victim at the moment of release, the kidnaper would undoubtedly, out of a sense of self-preservation, postpone the time of deliverance of his victim until the cure should be effected. For the kidnaper to do otherwise would be for him to violate the first law of nature—self preservation. It is the subject of judicial knowledge that a person will not willingly do any act resulting in his destruction. In desperation, if the cure should be slow, the kidnaper might even take the life of the victim rather than wait an unreasonable time for the cure to materialize.

In some cases, depending upon the severity of the injury inflicted, the release might have to be postponed for weeks or for an unusual length of time—all to the agonizing solicitousness of the victim's family, to say nothing of the discomfort and the anxiety to which the victim himself might continue to be subjected during such forced postponed confinement. That would be the exact antithesis to what was intended by Congress, and the results obtained by such a construction would be the very opposite to what Congress intended should be attained. Congress intended to alleviate the suspense and anxiety not only of the victim but of the victim's family and the law-enforcement authorities in the shortest time possible. It thus held out to the kidnaper a negative inducement and withheld the infliction of the death penalty if at the time of sentence by the Court the cure should then have been effected. To ascribe to Congress a contrary intention is but to champion an anomalous viewpoint on the subject and to thwart the real purpose underlying the Congressional inducement. Any portion of the opinions in the Parker case to the contrary should therefore be overruled as erroneous and as not carrying into effect the intention of the Congress which enacted the amendment.

From what has already been stated, it is apparent that in order for the death penalty to be applicable in *this* case it was incumbent upon the Government to first allege and prove beyond reasonable doubt not only the infliction of injuries, but the permanency thereof and that they were in existence at the time of imposition by the court of the sentence. The indictment in this case wholly fails to allege permanency of injuries, and there is a complete absence of any testimony upon the condition of the victim at the time the court imposed sentence. The victim appeared in

Court as the Government's chief prosecuting witness at the trial of petitioner, held, incidentally, over nine (9) years subsequent to the time of the alleged kidnaping. Not one single word flowed from her lips at the trial, or from the lips of any other witness, to indicate that she was then suffering in any manner or degree from the effects of the alleged kidnaping (T. R. 518 to 589). The presumption overwhelmingly prevails that she was cured. It devolved upon the Government to establish otherwise, which it wholly failed to do. An indictment must charge each element of an offense, *and every allegation must be proven beyond a reasonable doubt. There was a failure of allegation and proof in this case. Evans v. United States*, 153 U. S. 584.

One of the means of construing the intention of Congress is to construe the language and words used, keeping in mind that penal statutes are always to be strictly construed. One of the cardinal rules of construction of legislative enactment is that all of the words used in an act are to be given force and meaning. It cannot be assumed that any of the words used in an Act or proviso were used without some meaning, or that they were used superfluously, or that certain words could just as well have been omitted from an Act or proviso without destroying the legislative intent.

In the instant case, therefore, when the Judiciary Committee Report states that the death penalty is not to be imposed by the Court "IF THE KIDNAPED PERSON HAS BEEN LIBERATED UNHARMED PRIOR TO THE IMPOSITION BY THE COURT OF THE SENTENCE," it is exceedingly clear that it was the intention to withhold the imposition of the death sentence if, at the time of sentence by the court, the kidnaped person is *cured and alive*,

as distinguished from being *dead* or *permanently injured*. Whether to impose or withhold the imposition of the death sentence is made to depend upon the **PROVEN** condition (the allegations of the indictment permitting) of the kidnaped person at the time of trial and the imposition by the Court of the sentence. Had such not been the intention, the Judiciary Committee Report would not have contained the foregoing words, for Congress is not given either to wasting words or to using them without significant meaning. In a proviso, which, under certain circumstances, allows of the imposition of the death penalty, it is all the more to be supposed that every word is of major significance. It is clear that the framers of the proviso intentionally used the phrase "prior to the imposition by the court of the sentence" as relating to and defining the time governing the condition of the kidnaped person.

If it had been the intention of Congress to make the imposition of the death sentence to depend upon the physical condition of the kidnaped person at the very moment of release, instead of at the time of sentence by the court, Congress in no event would have resorted to the use of the many superfluous words which not only belie that intention but which themselves most persuasively indicate a clear intention that the proven condition of the kidnaped person at the time of trial shall control whether or not the death penalty shall be imposed.

It should be remembered that the proviso is, above all, and of itself, a limitation and restriction on the imposition of the death penalty and doubt as to its meaning should be resolved in favor of restricting the imposition of the death penalty in all cases where a doubt arises.

If it had not been the intention to have the time the court imposes sentence control the imposition or withhold-

ing of the imposition of the death sentence, the use of the words in the proviso and in the Judiciary Committee Report was quite superfluous, and in all probability the proviso would have been stripped down to a bare necessity of words and most likely would have read simply:

“provided that the sentence of death shall not be imposed if the kidnaped person has been liberated unharmed.”

But, when the words “liberated unharmed” in the present proviso are preceded by the words: “provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been” (liberated unharmed), it is indisputably clear that Congress purposely made the time of imposition by the Court of the sentence regulate and control the condition of the victim so as to determine then whether the death penalty should, or should not, be imposed.

Indeed, the rules of statutory construction so dictate. It is a rule of statutory construction that qualifying words cannot be rejected. The imposition by the court of the sentence qualify the words “liberated unharmed” so as to make the liberation unharmed inter-dependent upon the action of the court in imposing sentence. Manifestly, the phrase “liberated unharmed” refers to the court’s imposition of sentence. The qualifying words can not be rejected. They have a definite, dominating place and meaning in the proviso which control the phrase “liberated unharmed.”

There is another rule of statutory construction to the effect that, when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all. By

reading the clause "has been liberated unharmed" as applicable to all of the words of the proviso which precede that clause, it becomes very clear that the clause is so controlled in its meaning as to make it definitely clear that the death penalty may not be imposed if at the time of the imposition by the Court of the sentence the kidnaped person is cured and alive, and not either dead or permanently injured.

In support of the above rules of construction, the case of *United States v. Standard Brewery*, 251 U. S. 210, 40 S. Ct. 139, is of great assistance. That case had for construction the Prohibition Statute which made it unlawful to manufacture or to sell for beverage purposes any beer, wine, "or other intoxicating malt or vinous liquor." The opinion had this to say:

"It is elementary that all of the words used in a legislative act are to be given force and meaning, *Market Co. v. Hoffman*, 101 U. S. 112, 115, 25 L. Ed. 782; and of course the qualifying words 'other intoxicating' in this act cannot be rejected. It is not to be assumed that Congress had no purpose in inserting them or that it did so without intending that they should be given due force and effect. The government insists that the intention was to include beer and wine whether intoxicating or not. If so the use of this phraseology was quite superfluous, and it would have been enough to have written the act without the qualifying words * * *. So here, we think it clear that the framers of the statute intentionally used the phrase 'other intoxicating' as relating to and defining the immediately preceding designation of beer and wine."

This was said in the case of *Porto Rico Railway Light and Power Company v. Mor*, 253 U. S. 345, 40 S. Ct. 516:

"When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all. *United States v. Standard Brewery*, 251 U. S. 210, 218, 40 S. Ct. 139; *Johnson v. Southern Pacific Co.*, 196 U. S. 1, 18-19, 25 S. Ct. 158, 49 L. Ed. 363, and cases cited."

It will be particularly noted that the proviso *restricts* the imposition of the death penalty by the court if "PRIOR TO ITS IMPOSITION" the kidnaped person has been liberated unharmed. In *Commonwealth ex rel. Adams v. Stephens*, 345 Pennsylvania, 28 Atlantic 2d 924, the Court was called upon to determine what was intended by the use of the words "four years prior to his election," in a case involving residence qualification of an office holder. This was said:

"We are called upon to determine what the legislature meant by the words 'four years prior to his election.' It is contended upon the part of the respondent that we can go back any number of years in order to make up the four year requirement * * *. We are of the opinion that when the legislature provided that the prospective officeholder shall have been 'an elector of the borough for at least four years prior to his election' it meant immediately prior to his election."

In the instant case, a reasonable interpretation of the words "prior to its imposition," consonant with the intent of Congress, and considering this to be a restrictive proviso, would be that it was the intention to withhold the imposition of the death penalty if it be shown that at the time of trial the kidnaped person is cured and alive. This is but another approach to a solution to the problem at hand, and although it is from a different angle, yet it is

at the same time a plausible one, and one that presents an acceptable answer to the question at hand.

After a consideration of the question as herein presented, the conclusion is inescapable that the death penalty which was imposed upon petitioner was illegal.

Question of Permanent Injury.

It is the contention of petitioner that the death penalty may not be imposed unless it be first alleged in the indictment and proven beyond a reasonable doubt that the injuries which were said to have been inflicted were permanent. It was alleged in the indictment that the kidnaping took place in October, 1934 (R. 14). It was nowhere alleged that the injuries alleged to have been inflicted were permanent or of a permanent nature. It is axiomatic that nothing which is not alleged can be proven. The trial of petitioner commenced November 29, 1943 (R. 171), following a period of over seven (7) years of incarceration of petitioner in various Federal prisons, the last of which was Alcatraz, upon what turned out to be an illegally imposed sentence. It was not established upon the trial that any of the injuries which were said to have been inflicted upon the victim were permanent or of a permanent nature. The record is stony silent as to that.

It has been fully demonstrated by the opinion of the District Court in the Parker case (19 F. Supp. 450) that Congress preferred a live and cured victim to a dead or permanently injured one. It thus devolved upon the Government to establish that the victim involved in this case was permanently injured. As heretofore stated, she appeared at the trial as the chief prosecuting witness and neither she nor any other witness established that the

injuries which she claimed to have sustained were permanent or were in existence at the time of trial. It is not enough to establish receipt of injury. Before the death penalty may be imposed it must be established that the injuries inflicted were and are permanent and in existence at the time the court imposes sentence. IN THE INSTANT CASE THERE WAS A COMPLETE ABSENCE OF ANY TESTIMONY TENDING TO ESTABLISH THAT EVEN AT THE TIME OF RELEASE THE INJURIES CLAIMED TO BE IN EXISTENCE HAD BEEN PREVIOUSLY INFLICTED BY PETITIONER. THE RECORD ON THAT ISSUE IS STONY SILENT. THE GOVERNMENT WHOLLY FAILED TO ESTABLISH AN ESSENTIAL ELEMENT OF THE CRIME ALLEGED (R. 545).

In the Parker case, heretofore referred to, it was necessary, for venue purposes, to determine whether the offense charged in the indictment was such as enabled the death penalty to be inflicted. It was held that while the indictment charged beating and torture of Wendell, the victim, it did not aver any continuing or permanent injury to him. It was held also that the case was not one where the death penalty could be imposed, despite the allegation in the indictment of inflicted injuries and the establishment of such injuries by ample proof, hence the motion for change of venue was overruled. The record and the testimony of that case are contained in the records of the Supreme Court of the United States inasmuch as Parker petitioned for a writ of certiorari, but which was denied (59 S. Ct. 1044; 307 U. S. 642). A reading of the testimony of Wendell in that case discloses that the kidnapers handcuffed and roped him, hit him about the body, ran electric light globe over his face, hit him in his "privates," held a lighted ci-

garrette to his eyes, kicked him in his testicles, refused to let him go to the bath room, "spread-eagled" him on the floor; threatened to put him in a barrel of concrete and dump him into the ocean and to tear off his legs and "knock off" his whole family; that while imprisoned he had acute appendicitis, but was not allowed to be operated on, and that he had pneumonia; that his face was burned and that he had marks on his body, blood stains on his clothes; that his feet were tied, and that he was strapped, and in general that he was exceedingly roughly handled and treated. Nevertheless, such injuries, absent proof, were not held to be permanent.

As that record is a record of this Court, and involves a related question, this Court may take judicial notice of that record and of the testimony in that case.

This Court, in as late a case as *United States v. Pink*, 315 U. S. 203, 62-S. Ct. 552, had this to say:

"And there is no reason why we cannot take judicial notice of the record in this Court of the Moscow case. *Bienville Water Supply Co. v. Mobile*, 186 U. S. 212, 217, 22 S. Ct. 820, 822, 46 L. Ed. 1132; *Dimmick v. Tompkins*, 194 U. S. 540, 548, 24 S. Ct. 780, 781, 48 L. Ed. 1110; *Freshman v. Atkins*, 269 U. S. 121, 124, 46 S. Ct. 41, 42, 70 L. Ed. 193."

It is the earnest contention of petitioner that regardless of the nature of the injuries inflicted upon the kidnaped victim, it is an indispensable prerequisite to the imposition of the death penalty that not only must it be alleged in the indictment that the injuries were permanent, but that there must be such an abundance of proof as is required to establish that fact beyond a reasonable doubt. In this case the Government wholly failed to allege or prove the permanency of the injuries claimed to have been inflicted upon

the victim. Such failure is but the establishment of another reason why the death penalty imposed upon this petitioner was illegal and calls for a reversal of this case.

CONCLUSION.

This Court is earnestly implored to give to this case the earnest and serious consideration it so rightfully deserves, and to grant to petitioner the relief prayed for in his petition for writ of certiorari, heretofore filed.

In conclusion, petitioner desires to state that in 1936 he was given what turned out to be an illegal life sentence. After serving over seven years in prison upon that sentence, over six of which were served in Alcatraz Prison, and after having won the right to a legal trial, petitioner was unfortunate in having had imposed upon him the extreme penalty, and what he vigorously and earnestly contends was an illegal sentence. Since December 13, 1943, this petitioner has suffered indescribable mental tortures. In all, he has been confined for as many years as are served ordinarily by persons convicted of murder, considering that such persons are usually paroled in from eight to ten years after confinement. Petitioner has not taken a life, yet his life has been exacted in the administration of an Act which is fraught with uncertainty as to its meaning and scope. Any doubt that exists concerning the applicability of that Act to the facts of this case, petitioner asks this Honorable Court to resolve in his favor and to declare the sentence of death previously meted out to him to be illegal.

Respectfully submitted,

THOMAS HENRY ROBINSON, JR., PRO SE,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.



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No. 514.

IN THE
Supreme Court of the United States
October Term, 1944.

THOMAS HENRY ROBINSON, JR., - - Petitioner,

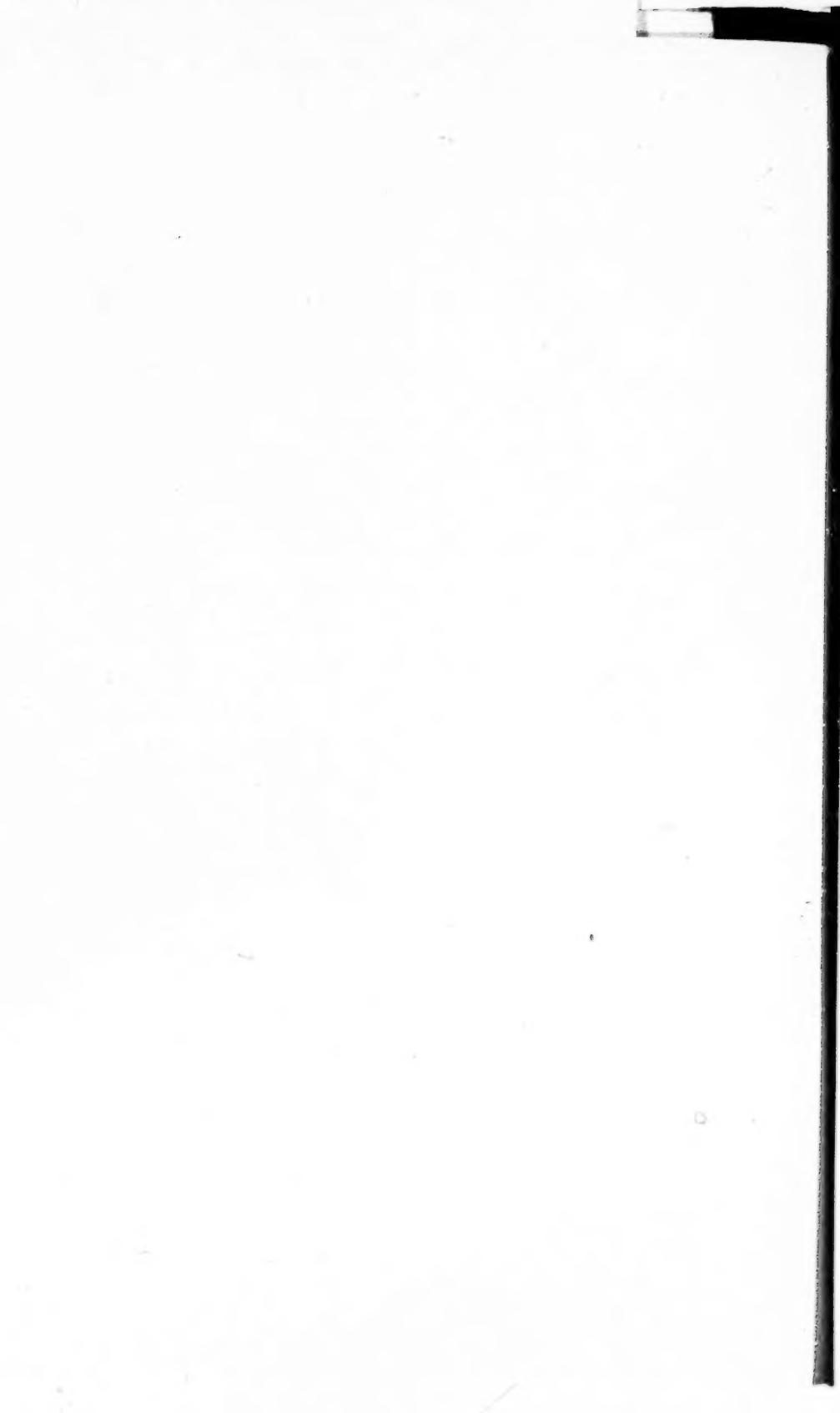
versus

UNITED STATES OF AMERICA, - - Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

THOMAS HENRY ROBINSON, JR., *Pro Se*,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.



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October Term 1944.

No. 514.

v.

UNITED STATES OF AMERICA, - - - Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER.

*To the Chief Justice and Associate Justices of the Supreme
Court of the United States:*

By this supplemental brief petitioner desires to enlarge upon Question 5 (d) of his Petition for Writ of Certiorari, to-wit: "Whether the death penalty was intended to be inflicted regardless of the time when inflicted or the degree of injury inflicted," so this question will be dealt with here.

ARGUMENT.

Time When Injury Inflicted Controls.

Petitioner vigorously contends that, in view of the language of the statute, which must in this criminal case be strictly construed, the intention of Congress considered, and the wording of the indictment under which he was

tried, convicted and sentenced, the death penalty has been illegally imposed upon him.

The indictment charged that while in the custody of petitioner the victim was beaten and injured, and the proof for the Government, without doubt, shows that whatever beating and injuring there was occurred in the victim's home PRIOR to the transportation in interstate commerce. Under federal law, prior-to-transportation, beating and injuring is no offense. At least, it is not an offense under the Lindbergh Act. That Act, it must be remembered, denounces as a crime simply the TRANSPORTATION IN INTERSTATE COMMERCE of a person who has theretofore been kidnaped and held for ransom or reward. The statute not having included PRIOR beating or injuring or the infliction of any injury at the time of the kidnaping as an ELEMENT of the offense of interstate transportation of a kidnaped person, it is beyond question, and is indisputably clear, that the death penalty in this case has been illegally imposed. It is exceedingly doubtful that, in view of the abstract wording of the statute, always to be strictly construed, and in view of the absence from the statute of any wording denoting that beating or injuring prior to transportation is any part of the offense denounced, the death penalty can ever be inflicted upon the mere proof or showing of the commission of acts of violence (or the results of such prior acts) committed upon the person of the victim preceding the actual transportation in interstate commerce. No such intention is or can be gathered from the language of the statute. Moreover, the words of the proviso restricting the imposition of the death sentence if, prior to the imposition by the Court of the sentence, the kidnaped person has been liberated unharmed, follow the statutory denounced offense of interstate transportation of

a kidnaped person. Under rules of statutory construction the words of the proviso relate to the offense of interstate transportation of already kidnaped persons.

There is nothing in the Act itself presupposing the punishment of persons assaulting persons, even though those same persons may afterwards be the subject of transportation in interstate commerce while kidnaped and held for ransom. The very language of the statute presupposes punishment, up to a maximum of the death penalty, for those kidnapers who, *after* having transported the victim in interstate commerce, do violence to the kidnaped person while being held captive in a State which is foreign to the State in which the victim is seized, for there could, of course, be no interstate transportation unless the victim were taken from one State to another.

If that contention be logical, and petitioner vigorously asserts that it is, then no matter what the proof might show with respect to the nature, degree or extent of injuries inflicted prior to the transportation in interstate commerce, or with respect either to what length of time the victim may have suffered from such previously inflicted injuries, the death penalty would not be applicable.

It is a rule of universal application that it is the statute, not the accusation under it in an indictment or proof in support of the accusation, that prescribes the rule to govern conduct and warn against transgression. *Stromberg v. California*, 283 U. S. 359. The statute under consideration, as before stated, does not denounce harming a person prior to the completed act of transportation in interstate commerce. Interstate transportation is defined by Section 408b of Title 18, U. S. C. A., to be the transportation from one State to another. Section 408a of that same title denounces transportation in such commerce of any person

“WHO SHALL HAVE BEEN UNLAWFULLY * * *
KIDNAPED * * * AND HELD FOR RANSOM,”

plainly indicating an intention to punish those who TRANSPORT persons who shall have already been kidnaped. The statute does not come into play or denounce any act antecedent to the very act of transportation in interstate commerce. By no stretch of imagination or statutory construction may it be said to embrace any act which precedes the act of such transportation. Applying that logical deduction to the instant case, it is beyond dispute that the death sentence was given this petitioner for acts of assault which it was claimed by the Government were made before the transportation denounced by the statute was ever even commenced, much less completed.

Another rule of general application is that the crime and the elements constituting it must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course of conduct it is unlawful for him to pursue. As said in *Counally v. General Construction Company*, 269 U. S. 385, 46 S. Ct. 126, a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. *Lanzetta v. State of New Jersey*, 306 U. S. 451, 59 S. Ct. 618, is of like effect.

And those same cases, and others which are referred to in them, hold that penal statutes prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of their requirements and the courts upon another. Petitioner has asserted, and now most vigorously asserts, that the Act in question is void for uncertainty, and that because of which the indict-

ment, trial, conviction and his sentence were each and all illegal and void.

However, if this Court should be unwilling to go so far and refuse to declare the Act unconstitutional, then petitioner asserts, because penal statutes are to and must be strictly construed, that the language of the present Act is not susceptible of any fair interpretation that would include within its scope or application any act which preceded the abstractly denounced crime of interstate transportation of an already kidnaped person. To hold otherwise would be to ignore all established rules of statutory construction. It follows as a logical conclusion that the death penalty which thus has been inflicted upon petitioner because of some claimed pre-transportation-inflicted injuries was, and is, illegal and should be set aside and this case reversed.

The Nature and Degree of Injury Inflicted.

Having demonstrated that injuries preceding transportation must be excluded from the scope and operation of the Act, the remaining question is whether or not the death penalty was intended to be, and may be, inflicted regardless of the degree of injury visited upon the person of the victim.

It has already been pointed out by petitioner in his brief that Congress intended to induce the kidnaper not to kill or permanently injure the victim by withholding the death penalty if the kidnaper would but refrain from action leading to death, to permanent captivity or to permanent injury (*Parker v. U. S.*, 19 F. S. 451). That inducement would be nullified entirely by imposing the death penalty in those cases where injuries, though inflicted, were not

alleged and proven to be permanent ones. It is a firmly established rule that failure of allegation is as fatal as the failure of proof, and that the Government will not be allowed to supplement an otherwise imperfect indictment or supplement a defective charge in the indictment by sufficient proof. Furthermore, that in an indictment upon a statute it is not sufficient to set forth the offense in the words of the statute unless those words, of themselves, fully, directly and expressly, and without uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. See in this connection the foundation cases of *U. S. v. Cruikshank*, 92 U. S. 542; *U. S. v. Carll*, 105 U. S. 611; and that the burden of proving each essential element of the offense is placed upon the prosecution and a failure on the part of the Government to so prove any one of the necessary facts in the commission of the alleged offense is fatal to the prosecution. *McAfee v. U. S.*, 105 F. 2d 21 (~~opinion by Judge Rutledge~~).

With those precepts in mind, the question is: Just how do they affect this case. They directly affect this case because the indictment, somewhat in the language of the statute, NOWHERE alleges that the injuries inflicted were permanent. While it alleges that they were inflicted while the victim was in the custody of the petitioner, and others, it fails miserably to allege whether such injuries were inflicted PRIOR to transportation or AFTER the transportation in interstate commerce of a person who had *already* been kidnaped had been completed. The distinction is vitally important. The indictment is fatally defective for that reason.

Also, there was no proof that at the time the victim was released she was suffering from any injuries which had been previously inflicted by petitioner. The assump-

tion prevails that they could have been caused by accident occurring to the victim irrespective of any ill-treatment at the hands of petitioner. There was a total failure to connect up the condition related at time of release to any act of petitioner. There was absolutely no proof that the injuries claimed to have been inflicted were permanent, laying aside for the moment the important distinction to be drawn that the time of infliction is of paramount and controlling importance. And there was a total absence of any proof that at the time the Court imposed sentence the victim was then in a harmed or impaired condition, the presumption overwhelmingly prevailing, in the absence of proof on the question, that the victim was cured and wholly sound physically. Such failure of necessary proof is fatal to the prosecution of this petitioner and demands reversal.

Also, there is directly involved here the question of whether the death penalty is to be inflicted regardless of the degree of such injuries which may have been inflicted, putting aside once more the all-important question of when the injuries were visited upon the person kidnaped. The statute which makes use of the terms "unharmed" and "liberated unharmed" is a new penal statute, and, although Congress saw fit to devote the whole of Section 408b of Title 18 U. S. C. A. to the definition of the term "interstate commerce," a well-known term, for some unexplainable reason did not utilize one single word in the Act to define the term "unharmed." "Bouvier's Law Dictionary," West Publishing Company's "Words and Phrases," and Webster's "New International Dictionary" are of no assistance. There appears to be no definition of the term. Consequently this is a case where the word in question has no well defined meaning, for it is not listed or catalogued in dictionaries or other works where it would be expected

such a definition would be found. The question then is: Is petitioner to die because of a statutory term for which there is no definition or meaning?

What might to one man or to a court mean "harmed" or "unharmed" or "did not liberate said person unharmed" might to another set of persons or to other courts have an entirely different meaning. There is no standard or guide by which to ascertain the intention of the Legislature. The terms are generic ones. The terms and the statute making use of the terms are devoid of specifications of what constitutes a "liberation unharmed." It is difficult to understand just what the Legislature meant by the words it chose to incorporate in the statutory amendment proviso. It is a debatable question whether or not Congress intended that a simple pin-scratch wound upon the body would amount to "harm." That would be a harm, though an insignificant harming, but nevertheless harm. Any degree of injury inflicted or any mark made upon the body might be said to be "harm" and amount to a harmed condition. Would such come within the category of "harm"? Or did the statute intend that more serious, aggravated, permanent injuries should spell the difference between the imposition of the death penalty or the withholding of it? As a matter of actual fact, the statute is silent as to whether it was intended that bodily or mental injuries should constitute a "harmed" condition.

The fact that confusion arises from the attempt to interpret or understand the words used makes the statute repugnant to the Constitution.

If Congress intended, as it undoubtedly did, to hold out an inducement to the kidnaper by withholding the death penalty if he would refrain from action leading to death, permanent captivity or permanent maiming of the victim,

the inducement would be wholly and completely nullified by imposing the death penalty in those cases where only slight injuries were imposed upon the victim. It may not be remiss to here assert that it is very probable that, once kidnapers became aware that they would be subject to having the death penalty imposed upon them if but slight injuries should be inflicted upon the victim, and regardless of the degree or severity thereof, there would be no incentive for them to either refrain from severely beating or torturing the victim or even killing him; for, if regardless of the degree of injury inflicted, the death penalty would nevertheless be applicable and be imposed, the jury so recommending, the kidnaper would be placed in a more advantageous position, so far as the likelihood of being caught and convicted is concerned, by killing the victim and hiding the body, at least to the extent of not having to be confronted by a live, talking, prosecuting victim in court upon the trial. In such a situation the old saying of "Dead men tell no tales" would be peculiarly applicable. That result would be the very opposite to what Congress intended, and the Congressional inducement would entirely lose its force and appeal.

Congress, having intended to make an attractive inducement to the kidnaper, certainly did not intend that whatever in the way of inducement it held out to the kidnaper should be negatived by having the death penalty inflicted on the kidnaper in those cases where only some slight injury could be shown to have been done the kidnaped person. If it be contended that the legislative intent was not to put to death those kidnapers who had but slightly injured their victim, nor those whose victims had recovered, what, then, was the legislative intent? The answer is not to be found in any of the words used in the language of the

statute, for there is no standard fixed nor any yardstick by which to measure when a victim will be considered as having been harmed or as having been released unharmed within the meaning and intent of the Act. The Legislature could have very easily defined the terms in the same manner as it saw fit to do with the term "interstate commerce." The fact that it did not strengthens the contention of appellant that the statute is ambiguous and void for uncertainty. Petitioner asserts the Act is unconstitutional for want of certainty, and that it is violative of the due process of law clause, and that his trial and conviction under such an Act is, and was, illegal to the extent demanding a reversal of this case.

If, however, this Court should be unwilling to declare the Act unconstitutional, then it devolves upon the Court to interpret the Act and ascertain the intention of Congress. It is the most earnest contention of the petitioner that it was the intention of Congress to withhold the death penalty from those kidnapers in cases where it is not alleged and proven beyond reasonable doubt that the action of the kidnaper resulted in death, permanent captivity or permanent injury, and that if at the time the Court imposes sentence the victim is then alive and cured or there is an absence of any proof that a contrary condition exists, a cure will then be presumed and that in neither of which events would it be within the power of the jury to recommend, or for the Court to impose, the death penalty.

CONCLUSION.

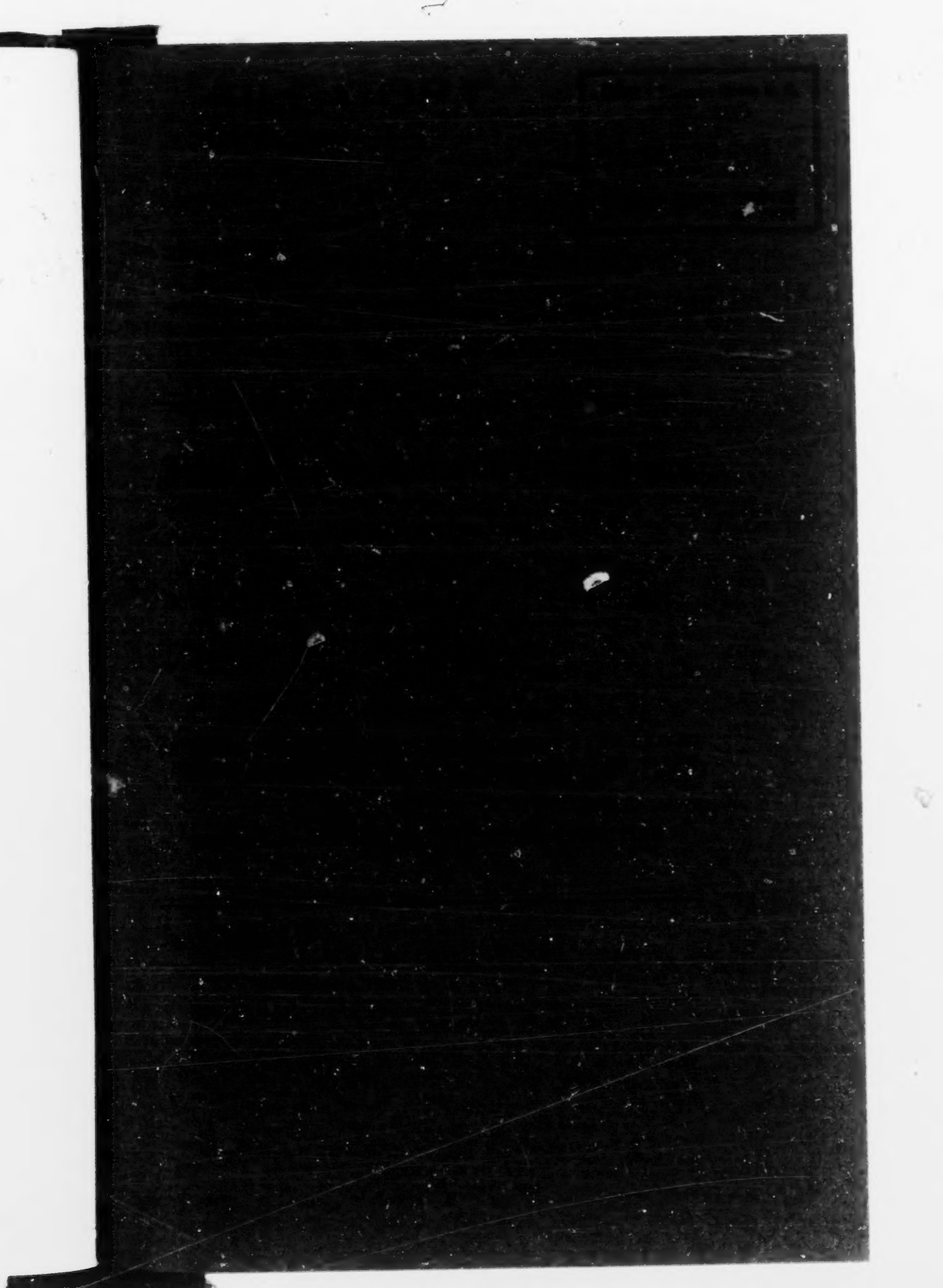
From what has been said in petitioner's previous brief and in this supplemental brief, the conclusion is inescapable that petitioner has been illegally convicted and condemned to die, and that this case should be reversed.

This Court is most earnestly beseeched to give to this case and to these arguments its serious consideration and to grant to petitioner the relief prayed for in his petition for writ of certiorari, heretofore filed.

Respectfully submitted,

THOMAS HENRY ROBINSON, JR., PRO SE,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.





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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 514

THOMAS HENRY ROBINSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 1571) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered July 31, 1944 (R. 1569), and a petition for rehearing (R. 1573) was denied August 28, 1944 (R. 1574). The petition for a writ of certiorari was filed September 27, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the term "liberated unharmed" in the clause of the Federal Kidnaping Act limiting the imposition of the death penalty is so vague and uncertain as to render that portion of the Act unconstitutional as applied to one who is charged with not having liberated the victim unharmed and for whom the death penalty is sought.

2. Whether the indictment is sufficient to support petitioner's conviction.

3. Whether the evidence is sufficient to establish that petitioner did not release his victim unharmed.

4. Whether it was error to admit letters written by petitioner while he was imprisoned under a prior invalid judgment.

5. Whether petitioner was accorded a fair and full trial, free from prejudicial comment by the prosecuting attorney and the trial judge.

6. Whether the jury's recommendation of the death penalty was influenced by a factor which they should not have taken into consideration.

7. Whether petitioner was prejudiced by the failure of the judge to sustain his challenges for cause to five prospective jurors.

8. Whether the alternate juror statute is constitutional, and whether petitioner was prejudiced by the use of an alternate juror.

9. Whether petitioner was subjected to double jeopardy in contravention of the Fifth Amendment to the Constitution.

STATUTES INVOLVED

The Federal Kidnaping Act of June 22, 1932, c. 271, 47 Stat. 326, as amended by the Act of May 18, 1934, c. 301, 48 Stat. 781 (18 U. S. C. 408a) provides in pertinent part as follows:

SEC. 1. Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: *Provided*, that the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.

* * * * *

The Act of June 29, 1932, c. 309, 47 Stat. 380 (28 U. S. C. 417a), provides in part as follows:

whenever, in the opinion of a judge of a court of the United States about to try a defendant against whom has been filed any indictment, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional jurors, in its discretion, to be known as alternate jurors. Such jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges: * * *.

STATEMENT

On October 20, 1934, petitioner, his wife, and father were indicted (R. 1-5) in the District Court of the United States for the Western District of Kentucky in two counts, the first charging a conspiracy to violate Section 1 of the Federal Kidnaping Act (R. 1-3), in violation of Section 3 of that Act, and the second charging the substantive offense (R. 4-5). The second count alleged, in substance, that petitioner and his co-defendants unlawfully transported in interstate commerce one Alice Stoll who had been kidnaped and held for ransom, and did not liberate her unharmed (R. 4). Prior to petitioner's trial, pe-

petitioner's wife and father were tried and acquitted on both counts. The conspiracy count was accordingly dismissed. (R. 177.) Petitioner, then a fugitive from justice, was apprehended on May 11, 1936, at Glendale, California, returned to Louisville, Kentucky, on May 12, 1936, and arraigned the following day (R. 859, 865, 873-875, 988, 1321). Petitioner entered a plea of guilty to the kidnaping charge and was sentenced to life imprisonment (see *Robinson v. Johnston*, 118 F. (2d) 998 (C. C. A. 9)). In August, 1943, as a result of habeas corpus proceedings instituted by petitioner, that sentence was invalidated on the ground that he had been denied the assistance of counsel at the time he entered his plea of guilty, and he was remanded to the District Court for the Western District of Kentucky for further proceedings (50 F. Supp. 774 (N. D. Cal.).)¹

Two attorneys were appointed for petitioner, and, upon arraignment on October 13, 1943, petitioner entered a plea of not guilty (R. 173-174, 217). The jury returned a verdict of guilty with a recommendation of the death penalty (R. 59, 1519), and the trial judge subsequently sentenced petitioner to death by electrocution (R. 66-67). Upon appeal to the United States Circuit Court

¹ The hearing in the habeas corpus proceeding followed upon this Court's remand of the cause to the Circuit Court of Appeals for the Ninth Circuit (*Robinson v. Johnston*, 316 U. S. 649) and that court's remand of the case to the district court for hearing (130 F. (2d) 202).

of Appeals for the Sixth Circuit the conviction was affirmed (R. 1569, 1571).

The evidence may be summarized as follows:²

In June 1931 petitioner obtained through C. C. Stoll and the latter's son, Berry Stoll, a position as attendant at a filling station of the Stoll Oil Refining Company in Louisville, Kentucky (R. 908-910). About six weeks later petitioner voluntarily left that position (R. 909-910, 913, 960) and thereafter he held a number of other positions in various cities (R. 913, 916-918, 920, 960-963). In about May 1934, petitioner again sought employment from C. C. Stoll, but the latter declined to rehire him, stating that it was against the policy of the company to rehire former employees who had left voluntarily and mentioning the then-existing depression (R. 918-919, 920). Shortly thereafter petitioner obtained a position as night janitor in Oak Park, Chicago, which he held for a short time (R. 920-921, 1319). This was petitioner's last employment. Upon leaving there petitioner and his wife moved to another part of Chicago, where they lived under an assumed name (R. 471-476, 477-480, 921, 966, 967).

During the first week of September 1934 petitioner, having then been without work for about a month, rented an automobile and drove with

² While petitioner challenges the sufficiency of the evidence only in so far as it relates to the imposition of the death penalty, a general summary of the evidence is of value in the appraisal of several of petitioner's contentions.

his wife to Indianapolis, Indiana, where they rented an apartment under the name of Thomas W. Kennedy (R. 476-483, 699-705, 921). Subsequently, on several occasions, petitioner sought employment in Indianapolis, but was unsuccessful (R. 921).

During September or October 1934, petitioner decided to kidnap C. C. Stoll (R. 922-923). While in Indianapolis, petitioner purchased a pistol (R. 984, 986) and thereafter wrote on his typewriter a ransom note which, with a few changes, was subsequently left by petitioner in the room from which he abducted Mrs. Stoll (see *infra*, p. 10) (R. 656-661, 922, 925, 961; Gov. Ex. 33, R. 598).

On October 8, 1934, petitioner and his wife drove to Louisville where, after placing his wife on a train for Nashville, he registered at a hotel under the name of John Ward (R. 488-489, 922). The next day petitioner, admittedly having "in mind the purpose of kidnaping Mr. Stoll," drove to C. C. Stoll's residence and "entered the home on some kind of pretense or other that I was a telephone man" (R. 922-923, see also R. 497-500). After learning that C. C. Stoll was not at home, petitioner entered the adjoining home of George Stoll under the same guise looking for C. C. Stoll (R. 504-511, 923). Not finding him there, petitioner returned to the hotel (R. 923).

The following day, October 10, 1934, petitioner proceeded to the home of Berry Stoll for the admitted purpose of kidnaping him (R. 511-518, 520, 923). Petitioner gained access to the house by claiming to be a telephone repair man (R. 518-519, 601, 671-675, 923). He questioned the maid who admitted him as to who was about, and thus learned that Mrs. Berry (Alice) Stoll was at home on the second floor of the house (R. 603-604, 923). Petitioner also questioned the maid about the relationship existing between Mrs. Stoll, Berry Stoll, and the Speed (Mrs. Stoll's (R. 548)) family (R. 603). Pretending to check the telephone facilities, petitioner went about the Stoll premises, finally asking the maid whether there was a telephone extension on the second floor. Upon being informed that there was such an extension, petitioner told the maid that he wanted to inspect it and asked her to accompany him (R. 604-605, 924).³ The maid informed Mrs. Stoll of this request and the latter, who was nursing a cold and was attired in a kimono in her bedroom, which contained the extension, moved to the guest room (R. 518-519, 550-552, 604-605, 662).⁴

³ Petitioner's actions did not arouse suspicion since the Stolls were having difficulties with the telephone at that time (R. 601-602).

⁴ The events related to this point, as to which there is little or no conflict, are evidenced largely by petitioner's own testimony. The events hereinafter related were proved

Once in the bedroom, petitioner placed a gun against the maid's back and directed her to go to the guest room (R. 605-606). Upon petitioner's entrance behind the maid into the guest room, Mrs. Stoll, who testified that she had never seen, talked to, or known petitioner prior to this occasion (R. 588-589), asked him what he was doing there. Petitioner replied that he had come to kidnap her. (R. 520, 553, 554, 606, 612-613.) Mrs. Stoll then in various ways, including the offer of a check, sought to dissuade petitioner, but without success (R. 520-521, 554, 606, 616, 924). Petitioner next temporarily placed his gun upon the bed in order to bind Mrs. Stoll. She attempted to snatch it, whereupon petitioner struck her upon the forehead with an iron pipe which he pulled out of his pocket, causing a fracture. (R. 521, 556-557, 590-591, 606-608, 676; Gov. Ex. 34, R. 606.) Mrs. Stoll continued to resist, calling out to the maid to get a gun which was in Mrs. Stoll's bedroom and herself made moves in that direction. Petitioner again struck Mrs. Stoll on the head with the pipe, causing her to bleed profusely and to collapse, in a dazed state, upon the bed. (R. 521-522, 607, 610-611; see also R. 596-597, 633-

by the testimony of Mrs. Stoll, the maid, and others, and by means of exhibits. In many respects this evidence coincided with the testimony of petitioner, who, however, as we show below (pp. 15-16), asserted that Mrs. Stoll was not abducted but was a willing victim with whom he was to and did share the ransom money.

634, 654, 673, 676, 680.) Petitioner, pointing his gun at Mrs. Stoll and the maid, then pulled Mrs. Stoll upright and ordered the maid to bind Mrs. Stoll's wrists with wire, which he produced from his pocket (R. 522, 555, 606-608). After Mrs. Stoll's hands had been bound, petitioner bound the maid hand and foot (R. 522, 609). While doing this petitioner threatened to kill Berry Stoll if he should arrive upon the scene; Mrs. Stoll, who had up to this point resisted petitioner "to every ounce of my strength," thereupon ended all resistance, being "anxious to get away before Berry came, I was afraid he would shoot him" (R. 522, 557, 609). Petitioner then placed adhesive tape over Mrs. Stoll's mouth (R. 523, 606-608) and, at the point of his gun (R. 522-523), ordered Mrs. Stoll out of the guest room to his car (R. 522-523, 609). As petitioner left the guest room, he threw onto the bed the ransom note (R. 609, 656-661, 678; Gov. Ex. 33, R. 598), which he had prepared in anticipation of abducting C. C. Stoll (see *supra*, p. 7), and said to the maid, whom he had left bound on the floor (R. 609, 653-654), "You give this to Berry Stoll" (R. 609, 611; see also R. 546, 555). On the note petitioner had inserted in pencil Mrs. Stoll's name as the victim, the name and address of the intermediary, and had changed the ransom demanded from \$30,000 to \$50,000 (R. 922-925, 932-933; see also R. 736-749, 961).

When petitioner and Mrs. Stoll reached his car, he ordered her to lie down on the floor in front

of the rear seat, bound her feet, and covered her completely with a blanket and newspapers (R. 523-524, 555, 560). After riding for at least two hours, petitioner informed Mrs. Stoll that they were in Indianapolis, Indiana (R. 525). He soon drove into a dark garage where he got out of the car, stating to Mrs. Stoll, who was still bound and gagged, that he was going to see whether "the coast was clear" and that if she made any attempt to scream or attract attention, he would "bump her off" (R. 525-526). He returned to the car in about five minutes, stated that the "coast was not clear," and drove the car to a deserted neighborhood (R. 526). There he unbound Mrs. Stoll's feet, directed her to sit next to him on the front seat (R. 526, 561), and then removed the tape from her mouth. Her head was still bleeding. At her request, he unbound her wrists, which were causing her great pain. (R. 526, 527, 561.) Mrs. Stoll, who had not seen the ransom note or the envelope in which it was contained (R. 546, 555), asked petitioner why he had kidnaped her. He replied, "For the money". (R. 527.) Petitioner then drove back to the garage where they had been previously and, upon arrival, asked Mrs. Stoll whether he would have to carry her or whether she would walk (R. 527). Mrs. Stoll agreed to walk, and they entered through the rear door of the apartment which petitioner had previously rented under the name of Kennedy (see p. 7, *supra*) (R. 527-528, 928). That night Mrs.

Stoll, who was very weak and ill, and whose head was "going around" and bleeding, asked petitioner to apply mercurochrome to the cut. He complied with this request but gave her wound no other attention. (R. 529, 563.)

Petitioner held Mrs. Stoll in this apartment from October 10 to 16, 1934 (R. 525-540, 699-705, 928-929). During that period he required her to sleep in one of the twin beds in the bedroom while he slept in the other, rejecting her request that she be permitted to sleep in the living room. Each night he tied her hands to the bedsprings and attached a cord from her wrist to his so that he would be warned of any movement by her. (R. 528, 529, 563, 704.) During the entire time, petitioner kept all the window shades drawn (R. 536, 570, 571, 576, 702, 723, 930). Several times a day, when he had occasion to leave the apartment to purchase food or for other reasons, petitioner would place a chair in the closet, securely tie Mrs. Stoll to it, gag her, place adhesive tape over her mouth, and lock the door (R. 530-531, 565, 581, 941). When Mrs. Stoll used the bathroom, she was permitted to close, but not lock, the door, and petitioner sat in the living room opposite the door holding a pistol in his hand (R. 566-567, 569, 572, 576; cf. R. 930).

During this period petitioner apparently spoke to the intermediary and others by telephone (R. 534-535, 569, 579, 581, 634, 636, 929). He soon

became angry at the delay in the payment of the ransom (R. 535), and Mrs. Stoll, at his direction and in words dictated by him (R. 533-536, 932), wrote three letters (Gov. Exs. 30-32, R. 533-537). The first of these, dated October 13, addressed to the intermediary, petitioner's father, urged the payment of the ransom as directed in the typewritten instructions which petitioner prepared and enclosed with the letter (Gov. Ex. 31, R. 535-536; Gov. Ex. 80, R. 985-986). Mrs. Stoll's wedding ring also was enclosed, for purposes of identification (R. 535). In his accompanying typewritten instructions, petitioner stated, in part, "I am the kidnaper of Alice Stoll. She is alive * * * and only has a small cut on her head * * *," that unless the ransom was paid as directed, Mrs. Stoll would "never be seen alive," and that any attempt to follow the bearer of the ransom funds "will mean death to Mrs. Stoll" (Gov. Ex. 80, R. 985-986). The second letter, dated October 14, was sent to a friend of Mrs. Stoll, a Miss McHenry, and, confirming a telephone call made to her by petitioner upon Mrs. Stoll's suggestion after he had refused to telephone to her family (R. 532), reiterated petitioner's instructions as to the manner of delivery of the ransom money and urged the necessity of strict compliance with the instructions, stating also in part that unless the instructions were followed and the police were

called off, the kidnaper and a friend of his "will carry out their threat" (Gov. Ex. 30, R. 533-534).⁵ On October 14, Mrs. Stoll, at petitioner's direction wrote to her husband stating that the kidnaper knew that the intermediary was being watched by the police and indicating that unless the instructions formerly given were followed her life would be in danger (Gov. Ex. 32, R. 536-537).

Fifty thousand dollars in bills of denominations prescribed in the ransom note was obtained by the Stoll and Speed families and, in accordance with petitioner's instructions, was transmitted to the intermediary and, eventually, on October 16, 1934, was delivered to petitioner by his wife at the apartment in Indianapolis (R. 538-539, 582, 639-653, 665, 668-694, 809-811, 938, 972). After he had thus received the money, petitioner, having unsuccessfully sought to persuade his wife (who had warned him that the police were following her) to flee with him (R. 538-539), again bound Mrs. Stoll to a chair and locked her in the closet, threatening to kill her if she made any attempt to leave the apartment within less than 24 hours (R. 539-540). Petitioner left but returned in about a half hour and again sought to persuade his wife to leave with him; she refused and he finally departed alone (R. 540-541).

⁵ Petitioner had led Mrs. Stoll to believe that he had two confederates (R. 538).

Mrs. Stoll was released by petitioner's wife shortly thereafter, on October 16, and returned home later that day (R. 540-541, 545-546, 574, 584-586, 662). At the time of her return, Mrs. Stoll still had on her head the cut, which was surrounded by clotted blood, and also a rounded swelling about an inch and a half in diameter which was of such a character as to indicate a possibility that "the actual integrity of the bone had been interrupted." Her lips were raw and bleeding as a result of the application of adhesive tape and she was in a state of general nervous tension and exhaustion (R. 590-592, 662, 636-637, 1043; see also Gov. Ex. 80, R. 985-986).

At the trial petitioner himself related almost all of the events which preceded his entry into the guest room on October 10, 1934 (R. 880-924, 961), and admitted his transportation of Mrs. Stoll from Louisville to Indianapolis (R. 926-927), their seven-day stay there, his preparation of the typewritten instructions, signed "kidnapper," which he mailed with Mrs. Stoll's letter of October 13 (see p. 13, *supra*) (R. 984-986), and his receipt of the ransom money (R. 937-938, 972). However, contrary to evidence previously and subsequently adduced by the Government (R. 552, 588-589, 616, 731-733, 1090-1091, 1348, 1351-1354, 1356-1360, 1363-1364, 1418), petitioner testified that he had sexual intercourse with Mrs. Stoll in 1931 on various occasions (R. 910-913);

that he had no gun on his person when he entered the Stoll house on October 10, 1934 (R. 929); that he did not strike or injure Mrs. Stoll at that time (R. 993-994); that on October 10, when he entered her room, Mrs. Stoll recognized him and voluntarily offered to become the substitute for her husband, Berry Stoll, whom petitioner had come to kidnap; that she suggested that petitioner raise the ransom sum demanded to \$50,000, and offered to assist him in obtaining the ransom if he would share it with her; that she voluntarily left the premises and accompanied him in his car to Indianapolis and remained there voluntarily for the first four or five days of their stay; and that he gave her one-half of the ransom money (R. 924-933, 937, 941-942, 972-977).

Petitioner also offered evidence (R. 40-41, 45, 883-922, 949-972, 992-993, 1070-1121, 1129, 1289-1312), including the testimony of psychiatrists (R. 1139-1140, 1197, 1218-1219), in support of his defense that he was insane at the time of the kidnaping on October 10, 1934 (R. 12). Prior to the acceptance of a plea from petitioner in the present proceeding the court, upon motion of the Government (R. 12-13), appointed four psychiatrists to examine petitioner and render a report as to his sanity as of that time (R. 34); these psychiatrists reported that petitioner was as he conceded (R. 12, 27-28, 37, 176-177, 948), then sane (R. 37-38, 106-107, 942, 1388-1389,

1390, 1401-1402, 1412). In addition, there was adduced at the trial professional testimony and other evidence tending to show that during a substantial period of time both preceding and following October 10, 1934, petitioner was normal, was capable of distinguishing right from wrong, and fully realized the consequences of his deliberate acts (R. 472-474, 478-480, 485-487, 501, 579-580, 750-751, 779-782, 791-794, 963-965, 1090-1092, 1292, 1295-1297, 1314-1316, 1319-1320, 1326-1333, 1338-1340, 1373-1387, 1387-1389, 1397, 1402, 1408, 1409, 1411).

ARGUMENT

1. Applying it to the case of a kidnaper who is charged with not having liberated his victim unharmed and for whom the Government invokes the death penalty, one of petitioner's contentions is that the term "liberated unharmed" in Section 1 of the Federal Kidnaping Act (*supra*, p. 3) is too vague and uncertain to meet the standard of due process. He says that the words do not disclose whether they cover any injury during the period of the victim's captivity or whether they relate only to his condition at the time of his release and that, further, they do not indicate the character and degree of the injury to which they relate. (Pet. 69-75.) The circuit court of appeals held that the provisions in which the term is found involve merely the punishment and there is

nothing in the Constitution which grants the accused the right to be informed of the punishment that may be inflicted upon him by law (R. 1571, op. 3).⁶ But it further held, in passing upon the sufficiency of the indictment, that "there is no merit in the contention that the language 'liberated unharmed' is too indefinite and uncertain," and that if ambiguity should be assumed it was completely negated by the averments that Mrs. Stoll was beaten and bruised and injured (R. 1571, op. 4-5). While it is true, as the circuit court of appeals states, that the question whether the victim was liberated unharmed does not relate technically to an element of the offense since, as the court points out (R. 1571, op. 4), the kidnaper may be convicted regardless of whether the victim is liberated at all or, if the victim is liberated, regardless of the victim's condition, mental or physical, we think that due process requires that the measure of punishment be sufficiently definite as to be understandable to those entrusted with the meting out of the punishment. Where the victim is liberated prior to the prosecution, the court cannot ^{impose} ~~seek~~ a death sentence until it has the verdict of the jury recommending such a penalty and the jury is not entitled to return such a verdict where the victim was liberated

⁶ R. 1571 embraces the whole opinion; we have consequently referred to the individual page numbers of the printed pamphlet opinion.

unharmcd. Cf. *Seadlund v. United States*, 97 F. (2d) 742 (C. C. A. 7). Hence, it is necessary that the question whether the victim was liberated unharmcd be submitted to the jury under instructions which appropriately define that term. The trial judge cannot, of course, perform this function if the statutory words used in measuring the punishment are too ambiguous as applied to the case before him. We do not think that that can be said in the present case. One of petitioner's specifications of ambiguity was sufficiently answered in the opinions of the district court (19 F. Supp. 450, 456 (D. N. J.)) and of the circuit court of appeals (103 F. (2d) 857, 861 (C. C. A. 3)) in *United States v. Parker*, in which this Court denied certiorari (307 U. S. 642). In that case the circuit court of appeals said (p. 861):

We agree with the court below that the act, reasonably interpreted in the light of its purpose, refers to the condition of the kidnapped person at the time of his release. It bans the death penalty if the kidnappers release him sound and unharmcd even though he may have received injuries during his captivity from which he has recovered. Any other construction would, it seems to us, tend to encourage the murder of the victim by the kidnappers if in the course of the kidnapping he had been injured. Congress must have preferred, as the court below aptly said (19 F. Supp. 450, 456), "a cured and live victim to a dead or per-

manently injured one, even if the kidnapers must refrain from liberating until the cure is accomplished."

Nor is there any merit in the contention that the term "liberated unharmed" is too uncertain as to the character and degree of the injury contemplated. "Harm" is a word in common usage with a well-defined meaning of "hurt" or "injury". See Webster's, *New International Dictionary*. Whatever may be the full ambit of these words, they apply to a situation, like the present, where the evidence discloses that the victim was twice brutally beaten over the head with an iron pipe while she was in the custody of the kidnaper, that she was still suffering from these injuries when, six days later, she was released, and that, in addition, her lips were raw and bleeding as a result of the adhesive tape which had been applied to them, and she was in a state of nervous exhaustion and tension. Certainly petitioner cannot complain because in some other situation there may be a question as to whether some other type of injury amounts to harm. Cf. *United States v. Classic*, 313 U. S. 299, 324-325. Here the term was properly defined by the trial judge, in a charge to which there were no exceptions, in submitting to the jury for their determination the issue as to whether they should recommend the death penalty (R. 1516-1518), and the evidence amply supports the verdict that petitioner's victim was not liberated unharmed.

2. Petitioner asserts (Pet. 76-89) that the indictment is defective because (1) it fails to particularize sufficiently the allegation that Mrs. Stoll was not liberated unharmed, (2) it is duplicitous and alleges a "constructive offense" by including charges of assault and battery in addition to that of transportation of a kidnaped person in interstate commerce (Pet. 82-86), and (3) it is insufficient as to the time and place of the commission of the crime charged (Pet. 87). These assertions are clearly without merit. The indictment (R. 4) alleged that on or about October 10, 1934, Mrs. Stoll was transported in interstate commerce after having been unlawfully seized, kidnaped, abducted and carried away and held for ransom, from Louisville, Kentucky to Indianapolis, Indiana and, while in the custody of the alleged kidnapers, was beaten, injured, bruised and harmed and was not liberated unharmed.

There is a manifest inconsistency in petitioner's argument that the indictment is insufficient for failure to set forth the facts as to the harm done to Mrs. Stoll and his argument that the indictment is duplicitous because it specifies that she was beaten and bruised. The recital of these facts did not, of course, charge petitioner with any additional federal offense; they were inserted to advise petitioner that the case was one in which the death penalty was applicable and would be invoked. The indictment clearly put

petitioner on notice that he was charged with not having liberated Mrs. Stoll unharmed, and went further by specifying the manner in which she was injured. Had petitioner desired fuller details as to the extent of the injuries which the Government would attempt to prove his remedy was by motion for a bill of particulars. Cf. *Glasser v. United States*, 315 U. S. 60, 66. The time and place of the offense are clearly specified with sufficient certainty. *Glasser v. United States*, *supra*; *Hudspeth v. McDonald*, 120 F. (2d) 962, 965 (C. C. A. 10), certiorari denied, 314 U. S. 617.

3. Petitioner contends (Pet. 89-90) that he was entitled to a directed verdict, or at least to a direction to the jury that they were not entitled to recommend the death penalty, on the ground that the indictment alleges that the injuries upon Mrs. Stoll were inflicted by petitioner, his father and wife while in their custody, and the Government's proof shows that the injuries were inflicted prior to Mrs. Stoll's being taken into custody and prior to her transportation in interstate commerce, and fails to show that she was ever in the custody of anyone except petitioner or that the injuries which Mrs. Stoll had upon her release were those inflicted by petitioner. The first injuries inflicted by petitioner upon Mrs. Stoll occurred in the course of his seizing and kidnapping her and hence were inflicted at the commence-

ment of the interstate journey. Obviously Mrs. Stoll, confronted by an armed kidnaper, was in custody from the moment he entered her room until she was released six days later. See *Gooch v. United States*, 82 F. (2d) 534, 538 (C. C. A. 10), certiorari denied, 298 U. S. 658. Nothing in the statute limits the application of the death penalty to abductions in which injuries are inflicted upon the victim subsequent to the transportation in interstate commerce. Moreover, petitioner's injuries to Mrs. Stoll's face by his application and removal of adhesive tape while at his apartment were still present at the time of her release.

Petitioner's contention that it was necessary to prove that Mrs. Stoll was injured while she was in the custody of all three persons indicted is baseless. The mere fact that petitioner's two codefendants were acquitted of complicity in the kidnaping cannot, of course, absolve petitioner from the consequences of his own acts, which were both charged and proved.

With reference to the identity of the person who inflicted the head injuries from which Mrs. Stoll was suffering at the time of her release, it is clear from the testimony of both Mrs. Stoll and the maid that it was petitioner (*supra*, p. 9). Mrs. Stoll also testified that her head was bleeding when they reached Indianapolis (*supra*, p. 12), that petitioner treated the head wound with

mercurochrome when they reached his apartment (*supra*, p. 12), that when she was released by petitioner, her "head was still thickly clotted with blood" and that she had "raw sores" on her lips from the adhesive tape that had been "put on and off so much" by petitioner (R. 545). In addition to Mrs. Stoll's testimony that she was bound and her mouth taped by petitioner several times daily (*supra*, p. 12), petitioner admitted in effect that he bound Mrs. Stoll during at least part of the time they were in his apartment (R. 928-929). Finally, there is testimony (*supra*, p. 15) as to Mrs. Stoll's physical state on October 16 when she returned home. There is no testimony that any injuries whatsoever were inflicted upon Mrs. Stoll by anyone other than petitioner. Upon such direct and circumstantial evidence, the jury was entitled to conclude, as it did, that petitioner inflicted the injuries which Mrs. Stoll had at the time of release.

4. Petitioner asserts (Pet. 63-68) that the trial court improperly admitted in evidence two letters, one to W. A. Smith of the Federal Bureau of Investigation (Gov. Ex. 51; R. 990-991), and another to Sanford Bates, Director of the Federal Bureau of Prisons (Gov. Ex. 79; R. 958-960), which he wrote in 1936 while he was imprisoned at Leavenworth Penitentiary following his original plea of guilty to the indictment in this case. Petitioner claims that these letters are in the

nature of admissions and confessions, and that they were involuntary because petitioner had been "induced to write them under the hope, promise, inducement and persuasion" of the prison warden that petitioner, by writing these letters, would be taken from isolation; and that he had also been advised by the prison psychiatrist that so long as he claimed to be insane he would be ineligible for parole (Pet. 63).

The Smith letter, in which petitioner requested the transfer to his mother of all his available personal effects, contains, it is true, an admission that petitioner utilized money which had been exchanged for ransom money for the purchase of an automobile. But this added nothing to petitioner's prior testimony that he had collected a ransom and had given half of it to Mrs. Stoll (*supra*, p. 16). Only that portion of the letter which contained no reference to the ransom money was at first admitted for the sole purpose of obtaining a specimen of petitioner's handwriting, in order to support the Government's contention that petitioner wrote the ransom notes and other documents (R. 755-758). The entire letter was read to the jury upon cross-examination of petitioner (R. 990-991) only after he had admitted on direct that he had received the ransom money. While petitioner objected to the introduction of the entire letter when it was first offered, he withdrew his objection when the unobjectionable portion

was offered for the limited purpose of establishing petitioner's handwriting (R. 755-758); when the letter was later offered in full (R. 990-991), petitioner did not object.

Petitioner objected to the introduction of the Bates letter (R. 955) on the ground that it was an admission or confession and was inadmissible because he was under an adjudication of insanity which had not been lifted and because inducements had been held out to him by the prison warden and psychiatrist (R. 955-958). The letter did not purport to be a confession or admission in the ordinary sense of those terms. It was written (R. 958-960) apparently for the three-fold purpose of inducing Mr. Bates to allow petitioner to remain at Leavenworth, which was near his home, instead of being sent to Alcatraz; to convince Mr. Bates that petitioner was not a mental case, the former decree of insanity having been obtained as "the result of my father imposing on his friendships," in order that Mr. Bates would see that petitioner obtained some constructive employment in the prison; and to persuade Mr. Bates to allow a certain girl, with whom petitioner was in love, to visit him and to correspond with him. It will be noted that there is in the letter itself no reference to any isolation of petitioner or to parole. Only in his avowals that he had found that crime did not pay and that he had determined to take his "sentence like a man" is there to be found any

implication that petitioner admitted his guilt, and they were evidently inserted in the letter solely to persuade Mr. Bates that petitioner had learned his lesson and that his requests deserved consideration. Moreover, the letter was admitted only on the issue of petitioner's sanity and the jury was instructed that it was not to be considered for any other purpose (R. 958). Petitioner's attack in this Court is predicated not on the ground that the letter was a confession of guilt but rather that it was a disavowal of insanity. He contends that it was not admissible unless attended by the same safeguards as apply to confessions since it was designed to negative his defense of insanity. (Pet. 65-67.) Perhaps one's appraisal of his own sanity is of no value one way or the other; that must be determined by other factors, such as conduct, expressed thoughts, etc. But this letter was of some value on the issue of sanity. It disclosed a quite rational discussion of the matters with which it dealt and bore all the earmarks of a letter of a sane man. We think, therefore, it was properly submitted to the jury as part of the non-psychiatric evidence before it upon the issue of sanity. It was, however, only a minor factor in comparison with the mass of expert and non-professional testimony which dealt specifically with that issue. The letter itself is quite inconsistent with the claim that it was coerced or induced, and the evidence dehors the letter does not, we believe,

support a picture of coercion (cf. R. 956-957). The circuit court of appeals found that both it and the Smith letter "were written without the slightest duress or constraint" and "were wholly voluntary" (R. 1571, op. 21-22).

5. Petitioner contends (Pet. 45-54) that remarks made by the prosecuting attorney during his summation and the comments upon the testimony by the trial court in his charge so destroyed the fairness of his trial as to require reversal of his conviction. It should be noted that petitioner did not at the trial offer any objection or exception in this respect. Hence, unless the alleged misconduct is so devitalizing in character as to fall within the doctrine that this Court should, in the interests of justice, consider the alleged error even though not excepted to in the trial court (*United States v. Atkinson*, 297 U. S. 157, 160), petitioner is precluded from seeking review on such ground. *United States v. Socony-Vacuum Oil Company*, 310 U. S. 150, 239; *Crumpton v. United States*, 138 U. S. 361, 364; *Petrilli v. United States*, 129 F. (2d) 101, 104 (C. C. A. 8), certiorari denied, 317 U. S. 657.

The remarks by the prosecuting attorney to which petitioner objects (Pet. 47-48) relate to statements made by the former with reference to the embarrassment to him and Mrs. Stoll which existed when he felt compelled to advise her of the probability that petitioner would give testi-

mony that would reflect upon her virtue, statements concerning the difficulties which the prosecuting attorney encountered in procuring witnesses to refute testimony of this character (R. 1497-1499), and a reference to the dangers with which the mothers and fathers of young women would be faced, based on petitioner's past performances, if petitioner, who was then concededly sane, were freed by the jury's verdict (R. 1494). The circuit court of appeals' opinion dealt with the first two of the alleged objectionable statements and held that they overstepped the bounds of propriety, but that, when they were examined in connection with the entire argument, they were "isolated expressions, which could have no prejudicial effect" (R. 1571, op. 22). We think the circuit court of appeals was correct in its appraisal, and that the third statement, of which petitioner apparently now complains for the first time, falls within the same category. Aside from the question of petitioner's sanity at the time of the abduction, there was really only one contested issue as to petitioner's guilt and that was whether Mrs. Stoll voluntarily accompanied petitioner from Louisville to Indianapolis. None of the prosecutor's statements bore directly upon that issue and hence there is not involved any misstatement of the evidence in respect thereof. Since petitioner's story that he had been intimate with his victim on several occasions in 1931 was so

thoroughly discredited by the Government's evidence disclosing that the tourist camp at which some of these intimacies were claimed to have occurred did not come into existence until several months after these alleged intimacies (cf. R. 908-910, 912-913 with R. 1347, 1353, 1357-1360, 1362-1364), it is evident that petitioner was making a vicious and unwarranted attack upon the virtue of his victim, a married woman. The embarrassment to Mrs. Stoll which resulted from the necessity of meeting such an attack was readily apparent to the jury which had heard the evidence. It cannot be said, therefore, that the prosecutor's remarks, both as to Mrs. Stoll's embarrassment and as to his anxiety to obtain witnesses to refute petitioner's charge, were any more harmful to the petitioner than the collapse of his unwarranted attack upon Mrs. Stoll's character. The third remark of which petitioner complains was merely an incidental comment of the prosecutor in the course of his discussion of petitioner's consistent conduct, as shown by the evidence, of attempting to evade responsibility upon charges preferred by women by casting aspersions upon their character (see R. 1493-1495). When these isolated statements are considered in the light of the prosecutor's argument as a whole and are judged in relation to the clear and convincing evidence of petitioner's guilt, we do not believe that they can be considered reversible error. *United States v. Socony-Vacuum Oil Company,*

310 U. S. 150, 239-240; *Dunlop v. United States*, 165 U. S. 486, 498.

There is no merit in petitioner's complaint (Pet. 46-47, 52-54) in respect of the comments upon the testimony by the trial judge in his charge. There is, of course, nothing in the record to indicate the tone of voice and manner of delivery of the charge by the court, but the prosecuting attorney's brief before the court below denied petitioner's assertions that they showed hostility. While petitioner makes a sweeping denunciation of the trial judge's comments upon the testimony, especially in so far as those comments bore upon that of his own witnesses, petitioner specifically attacks (Pet. 52-53) but four comments in an eighteen-page charge (R. 1499-1518). The first is the trial judge's remark that in his opinion the evidence was overwhelmingly in favor of the Government's contention that the transportation of Mrs. Stoll to Indianapolis was unlawful and against her will (R. 1509). The judge immediately followed this with the statement: "However, as I have said previously, any such opinion on my part is not in any way binding upon you, and you are the sole and exclusive judge of the facts in this case, including this particular issue." (R. 1509). Preceding his review of the evidence the judge had given specific, detailed and unequivocal instructions that the jury was entitled to disregard any state-

ment of fact and any opinion or comment by the court and that they were the sole and exclusive judges of the facts and of the credibility of each witness (R. 1505-1506). Under these circumstances, the trial judge's expression of opinion cannot be said to have coerced the jury and does not constitute error. *United States v. Murdock*, 290 U. S. 389, 394; *Quercia v. United States*, 289 U. S. 466, 469; *Patton v. United States*, 281 U. S. 276, 288; *Horning v. District of Columbia*, 254 U. S. 135; *Allis v. United States*, 155 U. S. 117, 123; *Simmons v. United States*, 142 U. S. 148, 155; *United States v. Parker*, 103 F. (2d) 857, 862 (C. C. A. 3), certiorari denied, 307 U. S. 642; *Russell v. United States*, 12 F. (2d) 683 (C. C. A. 6), certiorari denied, 273 U. S. 708. The judge's statement (R. 1514) that there did not appear to exist in Kentucky any such Lunacy Commission as that of which Drs. Solomon and Crice (psychiatrists who testified for petitioner) had claimed to be members (R. 1146-1148) but that the Kentucky statutes provided for specific appointment of physicians in individual cases where the question of sanity was in issue, was presumably accurate since it was unchallenged, although the question had arisen on the previous day and petitioner's counsel had had the same opportunity as the trial judge to examine the Kentucky statutes. There was no disparagement at all of the testimony of these witnesses with reference to petitioner's mental

condition. What petitioner refers to as the "unwarranted comment on whether petitioner's actions amounted to those of an insane person" (Pet. 53) is not clear since he does not designate any specific comment. One of petitioner's defenses was that he was insane at the time of the abduction. The court devoted seven pages of its charge to that issue, and thoroughly and comprehensively instructed the jury as to the applicable law which should guide them in their determination of the question (R. 1509-1516). He properly told the jury, of course, that they should consider not only the medical testimony but also all the acts of the defendant within a reasonable time before and after the date of the alleged offense which had a bearing on the issue, and he refreshed their recollection as to the acts which they were entitled to consider (R. 1515). We fail to see any basis for attack upon the fairness of the trial judge's summary of those acts pro and con. Finally, petitioner's assertion that the trial court made "unfair comment upon the credibility of witness Kirtley" (Pet. 53), is wholly without support since the court expressed no opinion at all concerning Kirtley's credibility, but merely restated the substance of Kirtley's testimony, and pointed out that his credibility had been attacked on several grounds, including the fact that he had been previously convicted of a felony, a factor which was "something for the jury to consider in determining what credibility you will give to

that witness' testimony" (R. 1507-1508; cf. R. 1466). We submit that the charge of the trial court was, as the circuit court of appeals found, "fair and impartial" (R. 1571, op. 23).

6. In his remarks prior to the imposition of the death sentence the trial judge stated (R. 1547):

I have tried to consider the manner [*sic*] of the statute as to what it means, as to what controls. It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty. That is only my view, but from my experience and from my own thought in the matter, I doubt very much, even if they had made such a recommendation, the Court would have considered it, except for the testimony on the part of the defendant, which I am accepting as untrue as the jury so found it and, as I have stated, at the time I thought the government's evidence overwhelmingly supported their contention in the matter.

Petitioner contends that it is therefore evident that the jury gave consideration to a factor which should not have entered into their deliberations as to whether to recommend the death penalty (Pet. 54-61). Obviously, as the circuit court of appeals concluded, there is nothing in the record which

supports any such assumption (R. 1571, op. 18-19), and we do not know what considerations actually motivated the jury in recommending the death penalty. Indeed, the jury might have been actuated by the brutality of petitioner's assaults upon Mrs. Stoll at the time of the kidnapping and the absence of any mitigating circumstances in connection with the offense. Since the evidence showed that Mrs. Stoll was not liberated unharmed, and the jury was properly instructed as to what they might consider in determining whether they should recommend the death penalty (R. 1517), and there was no demonstrable extraneous influence before the jury (cf. *United States v. Dressler*, 112 F. (2d) 972 (C. C. A. 7)), the jury's discretion was, it would seem clear, untrammelled and the basis of their recommendation may not be made the subject of speculation. Certainly, if the jury had attempted to impeach their verdict by advancing the ground that some extraneous consideration had motivated their recommendation, that would not have been allowed, as the court below stated, citing *Hyde v. United States*, 255 U. S. 347, 384, and *McDonald v. Pless*, 238 U. S. 264, 267. (R. 1571, op. 19). The testimony as to the alleged intimacies was offered by petitioner, and he cannot now, of course, be heard to complain that such testimony and its contradiction by the Government constituted "unwholesome * * * extraneous influences" upon either the jury or the trial court.

But even if it be assumed that the jury as well as the judge would not have concurred in the death sentence but for the failure of petitioner to establish his claim that Mrs. Stoll had been intimate with him, we do not think that that would vitiate the jury's recommendation or the judge's sentence. To give credence to his claim that Mrs. Stoll accompanied him willingly and was part and parcel of the conspiracy to dupe her husband, petitioner told the court and jury that Mrs. Stoll previously had been intimate with him on several occasions. That this was an utter fabrication was, happily, demonstrated as conclusively as the falsity of any such attack upon a woman's character can be. Petitioner therefore stood before the court and jury not as a repentant offender but as one who had not hesitated, to serve his purposes, to resort to a vicious and unwarranted attack upon the virtue of his victim, a respectable married woman. Certainly this was a factor which, in a case in which the evidence had established that the victim was not liberated unharmed, both the court and the jury were entitled to consider in determining whether there were any mitigating circumstances which would justify a recommendation of the imposition of a sentence less than death.

Petitioner is without standing to complain of the admission of evidence as to his prior convictions, or to the cross-examination of him with reference to his threats to "smear" women other

than Mrs. Stoll who had complained to the authorities about him (Pet. 61-62). Much of the evidence as to prior convictions and charges against petitioner was placed upon the record by petitioner (R. 886-887, 893-903, 991-993, 1077-1078, 1088-1089, 1111-1112, 1120) as well as by the Government, and the Government's evidence and the cross-examination with reference to these matters (cf. R. 950-954, 969-970) was relevant in connection with petitioner's defense of insanity (R. 950, 953-954). *Arwood v. United States*, 134 F. (2d) 1007, 1012 (C. C. A. 6), certiorari denied, 319 U. S. 776. Petitioner did not object at the trial, as he does now, to the Government's questioning of him and others as to whether he had ever stated to various officials that he would "smear" female witnesses if they testified against him on other charges (R. 971, 1089-1090). Such testimony, we submit, was clearly pertinent to the issue of petitioner's credibility in connection with his claim, denied by Mrs. Stoll, that he was intimately acquainted with her prior to the abduction. Having taken the stand in his own behalf petitioner was of course subject to the same searching cross-examination as any other witness. *Raffel v. United States*, 271 U. S. 494.

7. Petitioner also objects (Pet. 91-92) to the failure of the trial judge to disqualify for cause five prospective jurors as to whom petitioner subsequently exercised five of his peremptory challenges. Although petitioner asserts that these five

unidentified persons, who, we assume, are the same five concerning whom he complained in the court below (R. 1571, op. 6), should have been disqualified for cause because of various kinds of contact between them and Mrs. Stoll or her relatives, he does not contend that any of the persons who were actually on the jury were unqualified for service on any ground. Without detailing the evidence as to the challenged jurors (R. 245-315), we submit that the trial court did not abuse its discretion in denying petitioner's challenges for cause. *Reynolds v. United States*, 98 U. S. 145; *Hopt. v. Utah*, 120 U. S. 430; *Texas & Pacific Railway Co. v. Hill*, 237 U. S. 208; *Remus v. United States*, 291 Fed. 501 (C. C. A. 6), certiorari denied, 263 U. S. 717; *Belvin v. United States*, 12 F. (2d) 548 (C. C. A. 4), certiorari denied, 273 U. S. 706; *Lias v. United States*, 51 F. (2d) 215 (C. C. A. 4), affirmed, 284 U. S. 584; *Arnold v. United States*, 7 F. (2d) 867 (C. C. A. 7).

8. Petitioner challenges (Pet. 91-92) the constitutionality of the Act of June 29, 1932, c. 309, 47 Stat. 380 (28 U. S. C. 417a) which provides for the selection and use of alternate jurors. In addition to a regular panel of twelve jurors, an alternate juror was selected, and during the trial he replaced a regular juror who had become ill (R. 48, 408, 430-431, 1054). The alternate juror statute has been in effect since 1932 and its consti-

tutionality appears never before to have been challenged in the federal courts. We submit that it is clearly constitutional. The statute preserves the essential attributes of trial by jury, and does not impair the guarantees of the Constitution in that respect. At all times the jury in this case was composed of twelve sworn persons, who heard the evidence and received the court's instructions as to the law. A number of state decisions have upheld the constitutionality of analogous state alternate juror statutes. See *People v. Peete*, 54 Cal. App. 333 (1921); *People v. Howard*, 211 Cal. 322 (1930); *People v. Mitchell*, 266 N. Y. 15 (1934); *State v. Dalton*, 206 N. C. 507 (1934); *State v. Dolbow* 117 N. J. L. 560 (1937), appeal dismissed, 301 U. S. 669; *Commonwealth v. Fugmann*, 330 Pa. 4 (1938). At the time of selection of the alternate juror, petitioner originally objected to a "separate alternate," but withdrew his objection when the trial judge stated that he would not proceed with one alternate if petitioner objected (R. 431). Petitioner made no objection when the alternate replaced the juror who became ill (R. 1054). Having thus indicated that he was willing to proceed with one alternate and to have such alternate replace the ill juror, petitioner effectively waived any right that he might have had to the original jury of twelve without an alternate. Since petitioner could have waived a trial by jury (*Adams v. U. S. ex rel McCann*),

317 U. S. 269) or could have agreed to a trial by eleven jurors (*Patton v. United States*, 281 U. S. 276), he could, of course, agree to a trial by a jury in which an alternate replaced a regular juror.

9. There is no merit in petitioner's contention (Pet. 92-93) that he has been placed in double jeopardy in violation of the Fifth Amendment to the Constitution. Petitioner's original conviction was set aside as invalid as the result of the habeas corpus proceeding which he instituted. It is established that where a defendant himself causes his conviction to be set aside, he waives his constitutional protection against being twice put in jeopardy, and may be tried anew thereafter for the same offense. *Hill v. Texas*, 316 U. S. 400; *Stroud v. United States*, 251 U. S. 15, 18; *Trono v. United States*, 199 U. S. 521, 533; *Kepner v. United States*, 195 U. S. 100; *Murphy v. Massachusetts*, 177 U. S. 155, 158-160; *Robertson v. Baldwin*, 165 U. S. 275, 282; *United States v. Ball*, 163 U. S. 662, 671-672; *Pratt v. United States*, 102 F. (2d) 275, 279-280 (App. D. C.); *King v. United States*, 98 F. (2d) 291, 295 (App. D. C.); *Bryant v. United States*, 214 Fed. 51, 53 (C. C. A. 8).

CONCLUSION

Petitioner had a fair trial, was properly convicted, and presents no question requiring review on certiorari. On the first trial, it is true, he was given a life sentence, whereas in the instant pro-

ceeding he was given the death penalty, but it should be noted that in the prior proceeding he pleaded guilty, and there had not then been revealed the considerations which later made it apparent to the court and the jury that they had before them the case of an offender who, although he had committed a brutal crime, was quite unrepentant and did not adduce anything in mitigation of his crime. We respectfully submit that the petition for a writ of certiorari should be denied.

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OCTOBER 1944.



REPORT



THE [illegible] OF [illegible]

BY [illegible]

THE [illegible] OF [illegible]

THE [illegible] OF [illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 514

THOMAS HENRY ROBINSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 1571) is reported at 144 F. (2d) 392.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 31, 1944 (R. 1569), and a petition for rehearing (R. 1573) was denied August 28, 1944 (R. 1574). The petition for a writ of certiorari was filed September 27, 1944, and was denied December 18, 1944. On January 15, 1945, a petition for rehearing was granted, the

order denying certiorari was vacated, and the writ of certiorari, limited as hereinafter indicated, was granted. The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

The order granting certiorari limits review "to the question presented under Point No. 1 of the petition for rehearing and under Question 5 (d) of the petition for certiorari."

Point No. 1 of the petition for rehearing (p. 3) is headed thus:

Injuries inflicted must be permanent and be in evidence at time court imposes sentence, else death penalty may not be inflicted.

Question 5 (d) of the petition for certiorari (p. 25) reads:

Whether the death penalty was intended to be inflicted regardless of the time when inflicted or the degree of injury inflicted.

In the light of petitioner's contentions we conceive the questions presented for review to be:

1. Whether the words "liberated unharmed" in the proviso of Section 1 of the Federal Kidnaping Act limiting the application of the death penalty refer to the condition of the kidnaped person at the time of his release or at the time of trial and

imposition of sentence, where the release occurs prior to the trial.

2. Whether the word "unharméd" as used in the proviso requires as a condition to the imposition of the death penalty that the injury to the kidnaped person be permanent.

STATUTE INVOLVED

The Federal Kidnaping Act of June 22, 1932, c. 271, 47 Stat. 326, as amended by the Act of May 18, 1934, c. 301, 48 Stat. 781 (18 U. S. C. 408a), provides in pertinent part as follows:

SEC. 1. Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, * * *.

STATEMENT

On October 20, 1934, petitioner, his wife, and father were indicted (R. 1-5) in the District Court of the United States for the Western District of Kentucky in two counts, the first charging

a conspiracy to violate Section 1 of the Federal Kidnaping Act (R. 1-3), in violation of Section 3 of that Act, and the second charging the substantive offense (R. 4-5). The second count alleged, in substance, that petitioner and his co-defendants unlawfully transported in interstate commerce one Alice Stoll who had been kidnaped and held for ransom, and did not liberate her unharmed (R. 4). Prior to petitioner's trial, petitioner's wife and father were tried and acquitted on both counts. The conspiracy count was accordingly dismissed (R. 177). Petitioner, then a fugitive from justice, was apprehended on May 11, 1936, at Glendale, California, returned to Louisville, Kentucky, on May 12, 1936, and arraigned the following day (R. 859, 865, 873-875, 988, 1321). Petitioner entered a plea of guilty to the kidnaping charge and was sentenced to life imprisonment (see *Robinson v. Johnston*, 118 F. (2d) 998 (C. C. A. 9)). In August 1943, as a result of habeas corpus proceedings instituted by petitioner, that sentence was invalidated on the ground that he had been denied the assistance of counsel at the time he entered his plea of guilty, and he was remanded to the District Court for the Western District of Kentucky for further proceedings (50 F. Supp. 774 (N. D. Cal.)).¹

¹ The hearing in the habeas corpus proceeding followed upon this Court's remand of the cause to the Circuit Court of Appeals for the Ninth Circuit (*Robinson v. Johnston*, 316 U. S. 649) and that court's remand of the case to the district court for hearing (130 F. (2d) 202).

Two attorneys were appointed for petitioner, and, upon arraignment on October 13, 1943, he entered a plea of not guilty (R. 173-174, 217). At the trial, which began on November 29, 1943, there was evidence to the effect that when petitioner entered Mrs. Stoll's home in Louisville, Kentucky, with the announced intention of kidnapping her (R. 520, 553, 554, 606, 612-613), she resisted him, and that in subduing her petitioner twice struck her on the head with an iron pipe causing her to bleed profusely and to collapse in a dazed state upon a bed (R. 521-522, 556-557, 606-608, 610, 611; see also R. 596-597, 633-634, 654, 673, 676, 680). He then forced Mrs. Stoll's maid to bind Mrs. Stoll's wrists with wire which he produced from his pocket (R. 522, 555, 606-608) and himself placed adhesive tape over her mouth (R. 523, 606-608). After binding the maid (R. 522, 609) and leaving a ransom note which he had previously prepared (R. 609, 656-661, 678, 922, 925, 961; Gov. Ex. 33, R. 598), petitioner forced Mrs. Stoll at the point of his gun to accompany him to his car, ordered her to lie down on the floor in the rear, bound her feet, and covered her completely with a blanket and newspapers (R. 522-524, 555, 560, 609). Petitioner then drove to Indianapolis, Indiana (R. 525). Upon arrival there he drove into a dark garage, where he got out of the car, stating to Mrs. Stoll, who was still bound and gagged, that he was going to see whether "the coast was clear"

and that if she made any attempt to scream or attract attention, he would "bump her off" (R. 525-526). He returned to the car in about five minutes, stated that the "coast was not clear," and drove the car to a deserted neighborhood (R. 526). There he unbound Mrs. Stoll's feet, directed her to sit next to him on the front seat (R. 526, 561), and then removed the tape from her mouth. Her head was still bleeding. At her request, he unbound her wrists, which were causing her great pain. (R. 526, 527, 561.) Mrs. Stoll, who had not seen the ransom note or the envelope in which it was contained (R. 546, 555), asked petitioner why he had kidnapped her. He replied, "For the money." (R. 527.) Petitioner then drove back to the garage where they had been previously and, upon arrival, asked Mrs. Stoll whether he would have to carry her or whether she would walk (R. 527). Mrs. Stoll agreed to walk, and they entered through the rear door of the apartment which petitioner had previously rented under the name of Kennedy (R. 527-528, 699-705, 921, 928). That night Mrs. Stoll, who was very weak and ill, and whose head was "going around" and bleeding, asked petitioner to apply mercurochrome to the cut. He complied with this request but gave her wound no other attention. (R. 529, 563.)

Petitioner held Mrs. Stoll in this apartment from October 10 to 16, 1934 (R. 525-540, 699-705, 928-929). During that period he required her to sleep in one of the twin beds in the bedroom while he slept in the other. Each night he tied her hands to the bedsprings and attached a cord from her wrist to his so that he would be warned of any movement by her (R. 528, 529, 563, 704). During the entire time, petitioner kept all the window shades drawn (R. 536, 570, 571, 576, 702, 723, 930). Several times a day, when he had occasion to leave the apartment to purchase food or for other reasons, petitioner would place a chair in the closet, securely tie Mrs. Stoll to it, gag her, place adhesive tape over her mouth, and lock the door (R. 530-531, 565, 581, 941). When Mrs. Stoll used the bathroom, she was permitted to close, but not lock, the door, and petitioner sat in the living room opposite the door holding a pistol in his hand (R. 566-567, 569, 572, 576; cf. R. 930).

At the time of her release, on October 16, 1934, Mrs. Stoll still bore on her head the cut which was surrounded by clotted blood. There was also a rounded swelling about 1½ inches in diameter which was of a character to indicate a possibility that "the actual integrity of the bone had been interrupted." These injuries were caused by the blows inflicted with the iron pipe. Her lips were

raw and bleeding as a result of the application of the adhesive tape and she was in a state of general nervous tension and exhaustion. R. 545, 590-592, 636, 637, 662, 1043.)²

Mrs. Stoll testified on behalf of the Government at the trial nine years after her release (R. 518).

² Dr. Harry S. Frazier, who examined Mrs. Stoll on the evening of the day she was liberated, testified as follows (R. 590-591):

"A. Mrs. Stoll was utterly worn out, she was pale, bedraggled, had circles under her eyes, she had sores across her lips with some remnant of the dirt that adhesive plaster will leave at its margins, her blood pressure was 148 over 90, and her pulse was rapid, 96.

Q. Stop there and explain to the jury what that blood pressure rate means.

A. Well, that simply means that, though outwardly calm, she was under a terrific nervous tension and that was its reaction, just to boost up her blood pressure and accelerate her pulse rate. She was not trembling, she had no difficulty in expressing herself, but she did have, first, a rounded swelling on her right temple which was an inch and a half in diameter. It began just under her hair line and covered pretty much the entire temple. This place was not discolored as the usual bruise is, but was quite tender to touch and quite hard, and I felt that that represented bleeding under the skin that covers the bone, the periosteum, and the mere fact that it did not discolor and was so long absorbing, going down, made me believe that perhaps there the actual integrity of the bone had been interrupted. The other injury was on the back of her head a little above and behind the ear, and that was covered up by a clot of blood which had matted the hair also, and some red stuff was also on it which Mrs. Stoll said was mercurochrome.

Mr. HOGAN. That's objected to.

The COURT. Objection sustained to what Mrs. Stoll said. The jury will not consider that part of the testimony.

A. (Continuing.) This cut in the scalp was an inch long. It was partially healed. The edges were remarkable to say,

There was no testimony as to her physical condition at the time of the trial.

In his instructions to the jury the trial judge stated (R. 1517-1518):

Also keep in mind that you cannot recommend punishment by death if the kidnaped person has been heretofore liberated unharmed. The kidnaped person in this case was Mrs. Alice Speed Stoll. She has been heretofore liberated by the kidnaper and returned to her home. But this still leaves for your decision whether or not she was liberated unharmed. In considering and deciding this issue of fact, I instruct you that the statute, reasonably interpreted in the light of its purpose, refers to the condition of the kidnaped person at the time of her release. It bars the death penalty and also any recommendation by the jury to that effect if the kidnaper has released the kidnaped person unharmed, even though the kidnaped person may have received injuries during captivity from which she had recovered at the time she was liberated.

in apposition, that is, they were together. It was the sort of cut that should have had at least two stitches taken in it to be sure of good results, but, fortunately, the wound had not gaped and healing was in process. All that was necessary to do was to clean off the blood with soap and water and peroxide, and then I covered that with flexible collodion, the old fashioned new skin."

Accordingly, if your verdict is one of guilty, and upon consideration of the question of whether or not any recommendation of punishment by death shall be made to the court, it is necessary for you to first decide whether or not Mrs. Alice Stoll was liberated by the kidnaper unharmed. The word unharmed will be given by you its usual and ordinary meaning attributed to it in the ordinary use of the English language. It means not harmed by the kidnaper during the commission of the offense or while in the custody of the kidnaper prior to liberation by him. The usual and ordinary meaning of the word harmed is hurt; or injured, or damaged. If you find that Mrs. Alice Stoll was liberated unharmed by the kidnaper, you cannot recommend punishment by death even though your verdict is one of guilty. If on the contrary you find that Mrs. Alice Stoll was not liberated by the kidnaper unharmed, you then give further consideration to whether or not in your judgment and discretion you decide to recommend punishment by death in accordance with the instructions hereinbefore given to you.

* * * * *

So far as appears from the record no exception was taken to the charge (R. 1518) but petitioner's assignment of errors below indicates that the trial judge rejected a request for an instruction that the jury could not recommend the death

penalty because there was no evidence in respect of Mrs. Stoll's physical condition at the time of trial (R. 166).³

On December 11, 1943, the jury returned a verdict of guilty with a recommendation of the death penalty (R. 59, 1519), and on December 13, 1943, the trial judge sentenced petitioner to death by electrocution (R. 66-67, 1548). Upon appeal to the United States Circuit Court of Appeals for the Sixth Circuit the conviction was affirmed (R. 1569, 1571).

SUMMARY OF ARGUMENT

1. The interpretation of the proviso here involved must be determined from the face of the statute itself since neither the legislative history nor prior state legislation offers guidance. We think that, as held in *United States v. Parker*, 19 F. Supp. 450, 456 (D. N. J.), affirmed, 103 F. (2d) 857, 861 (C. C. A. 3), certiorari denied, 307 U. S. 642, where there has been a release the condition of the victim at the time of his release determines the applicability of the death sentence. Of course if there has been no liberation the death sentence may in any event be imposed on recommendation of the jury. The grammatical construction of the Kidnaping Act and its evident purpose exclude petitioner's construction that the death

³ The question was also again raised by counsel for petitioner in argument upon a motion for a new trial (R. 1523-1524, 1526-1530).

penalty may not apply if the victim has recovered from his injuries at the time of trial and sentence.

2. There is no warrant for petitioner's construction that a victim who has suffered no permanent injury is an unharmed victim within the meaning of the statute. Harm is a word in common usage with a well-defined meaning of "hurt" or "injury." Here the evidence established that Mrs. Stoll was twice beaten over the head with an iron pipe and that she was still suffering from these injuries when she was released six days later, that in addition her lips were raw and bleeding, and that she was in a state of nervous tension and exhaustion. The injuries inflicted upon Mrs. Stoll were obviously not trivial. Clearly at the time of her release she was not in an unharmed condition.

ARGUMENT

I

THE LIMITATION OF THE PROVISIO UPON THE APPLICATION OF THE DEATH PENALTY RELATES TO THE CONDITION OF THE KIDNAPED PERSON AT THE TIME OF HIS RELEASE

Section 1 of the Federal Kidnaping Act provides for the death sentence upon recommendation of the jury, but further provides that—

the sentence of death shall not be imposed by the court if, prior to its imposition the kidnaped person has been liberated unharmed.

Petitioner contends (Br. 2-13) that under the terms of this proviso the harm to the kidnaped person must subsist at the time of the trial and imposition of sentence even though the victim was released prior to the trial and was then suffering from injuries inflicted by the kidnaper. It is the Government's position that the term "liberated unharmed" refers to the condition of the victim when liberated, provided, of course, that the release occurs before the imposition of sentence.

a. The legislative history of the statute sheds no direct light on the interpretation of the proviso. As originally enacted in 1932 (47 Stat. 326), the ~~Kidnaping~~ Act contained no provision for the death penalty. The House Judiciary Committee had reported favorably a bill which, lacking a proviso such as that now contained in the statute, made the death penalty mandatory unless the jury recommended mercy (see H. Rep. No. 1493, 72nd Cong., 1st Sess.), but in the debate on the question whether to substitute the House bill for that passed by the Senate, which contained no provision for the death penalty (75 Cong. Rec. 13282-13304), considerable opposition to the death penalty was expressed by some members of the House (75 Cong. Rec. 13284-13285, 13288, 13289, 13290, 13294-13297).⁴ Due to the

⁴ One of the bases of objection to the death penalty was that voiced by Congressman Celler (75 Cong. Rec. 13285):

"If you insist upon the death penalty, I wager that you will inflict a penalty on the victim who is kidnaped. The victim

desire for prompt action, the session nearing its end, the bill was passed in the form proposed by the Senate (75 Cong. Rec. 13299, 13303-13304).

However, in 1934, when the Department of Justice suggested several amendments to the Kidnaping Act, none of which are relevant here, the House Judiciary Committee recommended additional changes, including the authorization of the death penalty with the proviso here involved (H. Rep. No. 1457, 73rd Cong., 2nd sess.). The House report on the bill merely paraphrased the language of the proviso, stating that the jury was to be permitted to designate the death penalty but that the penalty was not to be imposed "if the kidnaped person has been liberated unharmed prior to the imposition by the court of the sentence." This particular transposition of the language ~~of~~ the proviso, however, does not, as petitioner contends (Br. 4, 8), change the meaning of the proviso or aid in its construction. There were no hearings in connection with the amendments and no debate on the proviso. After a conference the proposed amendments were accepted, together with other conference reports, by both houses without debate (H. Rep. 1595, 73rd Cong., 2d sess.; 78 Cong. Rec. 8775, 8778, 8855-8857).

may be murdered or slain because the prisoner has nothing to gain by the victim being kept alive, because he forfeits his own life, in any event. He may destroy the life of the very person who is kidnaped and whom you are trying to save. The person kidnaped is the witness who, even when rescued, can always point the accusing finger at the guilty. Doing away with victim would save the life of the guilty. * * *

The concept of making the degree of punishment depend upon whether the kidnaped person suffered injury had been embodied in a few state statutes passed in 1933 following the kidnaping of the Lindbergh child, but the phraseology of such statutes differed from that subsequently embodied in the federal statute. One state merely distinguished between a live victim and a dead one,⁵ whereas others provided for a more stringent penalty if the kidnaped person suffered "bodily harm"⁶ or "serious bodily harm."⁷ The federal proviso was not precisely patterned on prior state legislation.⁸

b. The words "liberated unharmed" in the context of the proviso are subject to two interpretations. They may be construed to mean liberated

⁵ New York Laws of 1933 (Extraordinary Sess.), Ch. 773, p. 1586.

⁶ California Statutes and Amendments (1933), Ch. 1025, p. 2617; *People v. Tanner*, 3 Cal. (2d) 279, 44 P. (2d) 324.

⁷ West Virginia Acts (1933), Ch. 70, pp. 188, 189. Prior to 1933, Texas provided for a lesser degree of punishment where the kidnaped person was released "without serious bodily injury" (Texas Laws, 1931, Ch. 12, p. 12); and Wisconsin provided for a lesser degree of punishment if a kidnaped child suffered "no permanent injury" (Wis. Stats. (1929), sec. 340.56).

⁸ Since the adoption of the proviso in the Federal Kidnaping Act in 1934, six states have incorporated the words "liberated unharmed" in their kidnaping statutes (Idaho Code Anno. (1940 Supp.), sec. 17-1304; Louisiana Code of Criminal Law (Dart, 1943), sec. 740-44; New Mexico Stat. Anno. (1941), sec. 41-2503; Ohio General Code (1937), sec. 12427; Oregon Comp. Laws Anno. (1940), sec. 23:435; Wyoming Comp. Stat. (1940 Supp.), sec. 32:214A). We have found no state decisions interpreting those words.

without having been harmed at any time in the course of detention, or they may be construed to mean liberated in an unharmed condition at the time of liberation. The first construction attributes to Congress the intention to cause kidnapers not to harm the victim but without tending to secure liberation of a victim who has been harmed. The second construction offers the kidnaper an inducement, in addition to the inducement not to harm, to care for and to cure an injured victim so that he may be unharmed when liberated. The second construction encourages kidnapers not to murder an injured victim, an inducement not present under the first construction. In view of the temptation to kidnapers to murder their victims in order to dispose of witnesses to their crime, and in view of the interest disclosed in Congress to avoid a death penalty provision which would encourage this result, the Government submits that the second construction more properly reflects the intention of Congress and should be adopted.

Even if the first construction were held to state the legislative intent more correctly than the second construction, believed by the Government to be correct, it is submitted that in any event there is no support either in the words of the proviso or the intention of Congress for the third construction contended for by the petitioner to the effect that the condition of the victim at the time of the imposition of sentence

controls. Moreover, even if the first construction were adopted this case on its facts was correctly submitted to the jury because the charge required the jury to find not only that the victim had been harmed, which would have satisfied the first construction of the statute, but also that she was not cured and unharmed at the time of her liberation (R. 1517-1518). The petitioner cannot complain that the charge was more favorable to him than would have been required under the first construction of the proviso.

The only case construing the proviso on this question has adopted the construction urged by the Government. *United States v. Parker*, 19 F. Supp. 450, 456 (D. N. J.), affirmed 103 F. (2d) 857, 861 (C. C. A. 3), certiorari denied, 307 U. S. 642.⁹ The District Court stated that the harm may relate to the period of captivity or to the moment of liberation depending on whether it was the legislative intention to induce kidnapers not to harm the victim or to produce a cured and live victim and that Congress should be credited with

⁹ In the *Parker* case the indictment alleged that the victim had been beaten and tortured but was silent on his condition at the time of liberation although the proof subsequently disclosed that he was recovered and unharmed at that time. The defendants contended that this charged a crime punishable by death triable only in the county where committed under the venue statute applicable to capital offenses (28 U. S. C. 101). District Judge Clark, however, denied the motion for a change of venue on the ground that the death penalty was not applicable because the indictment did not allege that the injured victim was suffering harm at the time of liberation.

intending the second inducement. The Circuit Court of Appeals stated its agreement with the court below that the proviso refers to the condition of the kidnaped person at the time of his release even though he may have received injuries during his captivity from which he has recovered and that any other construction would encourage the murder of an injured victim by the kidnapers and is not to be attributed to Congress.¹⁰

The reference in District Judge Clark's opinion to "kidnappers who, at the time of the imposition of sentence, are unable to produce an unharmed victim" and the inducement to kidnapers "to refrain from action leading either to permanent injury, to permanent captivity, or to death" (19 F. Supp. at 456) do not, when read in their

¹⁰ The Circuit Court of Appeals stated (103 F. (2d) at 861):

"* * * We agree with the court below that the act, reasonably interpreted in the light of its purpose, refers to the condition of the kidnapped person at the time of his release. It bans the death penalty if the kidnappers release him sound and unharmed even though he may have received injuries during his captivity from which he has recovered. Any other construction would, it seems to us, tend to encourage the murder of the victim by the kidnappers if in the course of the kidnapping he had been injured. Congress must have preferred, as the court below aptly said (19 F. Supp. 450, 456), 'a cured and live victim to a dead or permanently injured one, even if the kidnappers must refrain from liberating until the cure is accomplished.'"

context, support the petitioner's construction.¹¹ Both the District Court and the Circuit Court of Appeals in the *Parker* case adopted the view that the victim's condition at the time of liberation controls.

c. The construction of the statute for which petitioner contends would, in its practical effect, lead to strange results. Thus, a kidnaped person might be released with a very serious concussion of the brain requiring a long period of treatment from which he eventually recovered completely. If the kidnaper were apprehended and tried immediately, the death penalty would clearly be applicable. If, however, for some reason his original conviction were reversed or set aside on

¹¹ Judge Clark stated (19 F. Supp. at 456):

"* * * The harm may relate to the period of captivity and it may relate to the moment of release or liberation—or, in other words, Congress may mean to punish with death (the jury concurring) kidnappers who have harmed their victim at any time—or, on the other hand, Congress may mean to punish with death (the jury concurring) kidnappers who, at the time of the imposition of sentence, are unable to produce an unharmed victim. Either interpretation indicates a legislative intention to offer negative inducements to kidnappers. The first inducement is to conduct the kidnapping with, shall we say, the minimum of violence. The second inducement is to refrain from action leading either to permanent injury, to permanent captivity, or to death. The kidnapping effectuated without some forcible seizure, and therefore some bodily harm, must be the exception. We declare, therefore, for crediting Congress with intending the second inducement and preferring a cured and live victim to a dead or permanently injured one, even if the kidnappers must refrain from liberating until the cure is accomplished."

habeas corpus, as here, with the result that he was not retried until several years later, he would, under petitioner's construction, be subject to a lesser penalty on retrial for the same crime, if the victim recovers in the meantime.¹² Any person accused of kidnaping and injuring a person would thus have a powerful motive for attempting, by any means within his power, to delay as long as possible the trial of his case. We do not believe that Congress intended to make the imposition of the death sentence dependent upon the many factors which may result in an early or delayed trial.

Moreover, there is no reason to suppose that Congress intended to make a kidnaper the beneficiary of extraneous factors which may delay trial until long after the injured victim is liberated. Stated in another way, the purpose of the proviso is satisfied if it induces the kidnaper to hold unharmed and to liberate the victim. There is nothing to suggest that the Congress intended by the proviso to give the kidnaper the benefit of the period of time between liberation and imposition of sentence in which the victim might recover from injuries received. While this might persuade the kidnaper not to delay the release of the victim pending attempted cure this construction weakens the basic inducement not to harm the victim or neglect his

¹² The petitioner was sentenced on December 13, 1943, more than nine years after the kidnaped person was liberated on October 16, 1934.

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injuries in reliance on the speculation that the victim will recover after liberation and before trial.

We submit that petitioner's construction is not in harmony with the grammatical structure and evident purpose of the proviso; that the condition of the victim at the time of his release is the factor which controls the application of the death penalty.

II

THE HARM WHICH THE PROVISO CONTEMPLATES IS NOT LIMITED TO PERMANENT INJURIES BUT INCLUDES INJURIES SUFFERED BY MRS. STOLL

Petitioner also contends that a victim who has suffered no permanent injury is an unharmed victim within the meaning of the statute. (Br. 13-16). This contention is apparently intended as an aid to his contention that the injuries must subsist at the time of trial and sentence. In his case the injuries would have had to subsist for nine years (footnote 12, *supra*, p. 20) and hence be more than temporary in character. Petitioner seeks support for his contention in the opinion of the district judge in the *Parker* case but, as has been indicated (*supra*, pp. 18-19), that judge was merely explaining that through the proviso Congress was holding out to the kidnaper the inducement to attempt to cure the victim and thus prevent his injuries from becoming permanent or causing his death.

a. There is no basis for a contention that the injuries must be permanent in character. Had Congress meant to provide that the death penalty should not be imposed if the kidnaped person were released without permanent injury, it would undoubtedly have said so by direct language as the Wisconsin Legislature had already done (*supra*, p. 15, footnote 7). Nor did Congress adopt the language of any of the State statutes which provide for a lesser punishment if the victim were alive (New York), "without serious bodily injury" (Texas), without "serious bodily harm" (West Virginia), or without "bodily harm" (California) (*supra*, p. 15).

"Harm" is a word of common usage with a well-defined meaning of "hurt" or "injury" (see Webster's New International Dictionary).¹³ A person may be very seriously injured and may require years of treatment and yet may recover completely. Clearly, a person so injured in the course of a kidnaping is not liberated unharmed. Moreover, it is difficult to believe that Congress did not envisage, and by the proviso seek to prevent, injuries of the very dangerous type of those inflicted upon Mrs. Stoll—injuries of a character very likely to result from resistance to a forcible abduction.

¹³ Restatement of the Law of Torts, Vol. I, Sec. 7 (a) states that "'harm' implies the existence of a tangible and material detriment". Section 15 states that "bodily harm is any impairment of the physical condition of another's body or physical pain or illness."

In *Gooch v. United States*, 82 F. (2d) 534 (C. C. A. 10), a prosecution under the Kidnaping Act in which the death sentence was imposed, the injury to the victim's hip was caused by the breaking of a show-case glass during the initial fracas between Gooch's confederate and the kidnaped person. The evidence established that, after the victim's release, his wound was dressed and closed with four stitches; there apparently was no evidence of permanent injury (82 F. (2d) at p. 536). This Court denied certiorari (298 U. S. 658) as against the contention of the petition for certiorari that the statute did not apply to injuries incidentally inflicted or to injuries of such trivial character (see petition for certiorari, No. 883, October Term, 1935, p. 19).¹⁴

b. There may be, of course, situations in which a particular injury is of so slight a character that there is a question as to whether it amounts to harm within the meaning of the proviso. This is not such a case. Here the evidence discloses that petitioner twice forcibly struck Mrs. Stoll over the head with an iron pipe to subdue her, that she was still suffering from these injuries when she was released six days later, that in addition her lips were raw and bleeding as a result of the adhesive tape which had been applied to them, and that she

¹⁴ Previously this Court on certificate had construed another portion of the statute (297 U. S. 124).

was in a state of nervous exhaustion and tension (see Statement, *supra*, pp. 7-9). Petitioner cannot complain because in some other situation there may be a question whether some other type of injury amounts to harm. Cf. *United States v. Classic*, 313 U. S. 299, 324-325.

The words "liberated unharmed" were properly defined by the trial judge in submitting to the jury for their determination the issue as to whether they should recommend the death penalty (see *supra*, pp. 9-10). The evidence amply supports the verdict that petitioner's victim was not liberated unharmed.

The supplemental brief for the petitioner (pp. 1-5) states that any injuries committed in the course of the seizure prior to the transportation of the victim cannot be used as a basis for the imposition of the death sentence. This question may not be within Question 5(d) of the petition for certiorari which this Court agreed to review when read in connection with Point No. 1 of the petition for rehearing, particularly since Question 10 of the petition specifically dealt with this point (p. 26), was separately answered in the brief in opposition (pp. 22-23), and review of this question was not granted. In any event, the Government submits that there is no merit in this contention for the reasons stated in its brief in opposition (pp. 22-23) and in *Gooch v. United States*, 82 F. (2d) 534,

536, 537-538 (C. C. A. 10). The petition for a writ of certiorari in the *Gopch* case, which urged this point, was denied, 298 U. S. 658.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of conviction should be affirmed.

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FEBRUARY 1945.



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JAN 11 1945

CHARLES ELMORE GORPLE

No. 514.

IN THE
Supreme Court of the United States
October Term, 1944.

THOMAS HENRY ROBINSON, JR., - - Petitioner,

versus

UNITED STATES OF AMERICA, - - Respondent.

PETITION FOR REHEARING ON PETITION FOR
WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF AP-
PEALS FOR THE SIXTH
CIRCUIT.

THOMAS HENRY ROBINSON, JR., *Pro Se*,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.

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THOMAS HENRY ROBINSON, JR., - - - - *Petitioner,*

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**PETITION FOR REHEARING ON PETITION FOR
WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF AP-
PEALS FOR THE SIXTH
CIRCUIT.**

*To the Chief Justice and Associate Justices of the Supreme
Court of the United States:*

STATEMENT.

On December 18, 1944, this petitioner's petition for writ of certiorari to the United States Circuit Court of Appeals, Sixth Circuit, was denied. No reason was given for the denial, so petitioner is without information as to why it was denied. Petitioner, in his petition, presented to this Court more than a sufficiency of constitutional and Federal questions to warrant the granting of such a writ to him. Petitioner is at a complete loss to understand why his petition,

containing so many vital and important such questions, was denied.

As the DEATH penalty has been imposed upon this petitioner illegally, your petitioner feels thoroughly justified in *insisting* that this Court grant his petition and thereby enable him to at least have an opportunity to present his case to the Court for its determination—to present a case which is replete and top-heavy with violations of his inherent constitutional rights; a case which embodies, likewise, a multitude of Federal questions and a multiplicity of “Reasons for Granting the Writ,” together with a large variety of important questions of Federal law and important questions of public importance which have not, but should be, decided by this Court. This case presents, as does no other case, more than a sufficiency of impelling reasons for this Court granting the writ. The first such reason, and one that should be all sufficient, is that petitioner has been sentenced *illegally* to DIE in the electric chair.

If this Court shall refuse to grant the writ in this case, there will be forever foreclosed to this petitioner the right or opportunity to conclusively demonstrate to the Court that, *in this case*, the DEATH PENALTY recommendation upon the part of the jury and the infliction of the DEATH PENALTY by the Court were, and are, in violation of the provisions of the Act of the Legislature, known as the Lindbergh Act, Title 18, Section 408a, U. S. C. A.

Therefore, unless this Court makes it possible, by granting the writ, for petitioner to demonstrate the illegality of the actions of the jury and of the trial court in so recommending and imposing the DEATH PENALTY, this petitioner will be put to DEATH illegally and his life, the most precious and endearing thing to man, and a thing

which it is not given to man to give or to restore will then have been illegally and ignominiously forfeited, and the shame and the disgrace for such illegal forfeiture will forever rest upon the very laps of those tribunals responsible therefor. The consideration of that question alone should be of sufficient impelling reason for this Court to grant the writ in this case.

POINT No. 1. Injuries Inflicted Must Be Permanent and Be in Evidence at Time Court Imposes Sentence, Else Death Penalty May Not Be Inflicted.

A point that has been entirely overlooked by the trial court and by the Circuit Court of Appeals is that the death penalty may not be inflicted unless it be shown that the injuries which the kidnaped victim sustained were PERMANENT, and that as a condition precedent to the jury recommending, and the Court imposing, the death penalty, it must be conclusively established that at the time of the trial and the imposition of the sentence by the court the kidnaped person is either dead or still in a harmed condition.

The intent of the Legislature becomes of assistance when attempting to determine this question. The report of the Judiciary Committee of the House of Representatives, No. 1457, to accompany S. 2252, 73rd Congress, 2d Session, amending the Federal Kidnaping Section, used the following language:

"The third addition to this act is to permit the jury to designate the death penalty for the kidnaper. However, this penalty is not to be imposed by the Court if the kidnaped person has been liberated unharmed prior to the imposition by the Court of the sentence."

An interpretation of the words of the Act itself, and of the words above quoted, are presented in this case. As will be seen above, there is a limitation upon the imposition of the death sentence.

The Act itself contains these words:

“provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed.”

A fair interpretation of the words contained in the Act and report of the Judiciary Committee, above quoted, lead to the inescapable conclusion that the death penalty may not be imposed by the Court if at the time of the trial and the imposition of the sentence the kidnaped victim is *then* free from harm.

If that be the correct interpretation of the words of the statute itself and of the report of the Judiciary Committee, which petitioner vigorously asserts is a correct interpretation of the statute and of the intention of the Legislature, then this petitioner has been illegally condemned to DIE, for, in the case of petitioner, his alleged victim, Mrs. Stoll, was in court and testified for the Government as its chief prosecuting witness. Her testimony, direct and cross, is to be found on pages 518 to 589 of the Transcript of Record. Neither she nor any other witness claimed, intimated, or maintained either that she had been permanently injured as a result of the alleged kidnaping, or that at the time of the trial and imposition of the sentence she was then suffering from any injury, or result of any injury claimed to have been inflicted upon her by petitioner. The death penalty which resulted, and which will be carried out, unless this Court intervenes, goes way beyond what was intended by Congress and is illegal.

Petitioner offered Instructions 7 and 8 (p. 166, Tr. Rec.), to the effect that the death penalty might not be recommended or imposed because of a complete lack of evidence as to the harmed condition of the alleged victim at the time of the trial and imposition of sentence. That instruction was not given. It was petitioner's contention then, and now, that the death penalty should in no event have been recommended or allowed to be imposed because of a total absence of evidence showing the alleged victim to be in a harmed condition at the time of the trial, and because of a total absence of any evidence showing that any *permanent* injuries were ever inflicted upon the alleged kidnaped person. This presents to this Court a most vital and important question, involving not only the freedom, but the very life of this petitioner.

There has been but one case, that of *United States v. Parker*, 19 F. Supp. 450, 103 F. 2d 857, 3d Circuit, in which the harmed or unharmed question was determined. The opinion in the Federal Reporter, while reciting that it agreed with the court below (19 F. Supp. 450), is in reality in direct disagreement with the opinion in the Federal Supplement. The result is that there is a vast inconsistency in the only opinions on the subject under discussion. That should be sufficient justification and reason for this Court taking hold of this case and straightening out what appears to be a most complex problem.

If not clarified by a ruling from this Court, this petitioner will be required to illegally give his life as an unwarranted penalty for an offense which does not, in this case, warrant the infliction of the extreme penalty.

In the *Parker* case, Ellis Parker, with others, was indicted for violation of Title 18, U. S. C. A. 408 and 408c. It was necessary, for venue purposes, to determine first

whether the offense charged was such as enabled the death penalty to be inflicted. The district court was uncertain of the meaning of the phrase:

"* * * provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnapped person has been liberated unharmed."

The opinion, found in 19 F. Supp. 450, contains these words:

"The significant words are, of course, 'liberated unharmed,' a past participle and an adjective with the negative prefix 'un.' The phrase is capable of two grammatical interpretations. The harm may relate to the period of captivity and it may relate to the moment of release or liberation, or, in other words, Congress may mean to punish with death (the jury concurring) kidnappers who have harmed their victim at any time—or, on the other hand, Congress may mean to punish with death (the jury concurring) kidnappers, who, **AT THE TIME OF THE IMPOSITION OF SENTENCE, ARE UNABLE TO PRODUCE AN UNHARMED VICTIM.** * * *

"The first inducement is to conduct the kidnapping with, shall we say, the minimum of violence.

"The second inducement is to refrain from action leading either to **PERMANENT INJURY**, to **PERMANENT CAPTIVITY**, or to **DEATH.** * * *

"We declare, therefore, for crediting Congress with intending the second inducement and preferring a **CURED** and **LIVE** victim to a dead or permanently injured one * * *."


The district court in that case adopted the second inducement, the cured and live victim theory, and held that Congress intended that the second inducement should apply and that Congress preferred a **CURED** and *live* victim to a dead or permanently injured one.

7

Despite such a holding, and although the opinion of the Third Circuit in the Federal Reporter, already referred to, states that the appellate concurred with the lower court, yet a reading of the two opinions discloses a wide divergency in the two upon the most vital question, because the lower court in the Parker case is committed to the view that if the defendant is able to produce, or there is produced, at the time of trial and imposition of sentence either a CURED or LIVE victim, the death penalty may not be imposed. Assuming, for argument's sake, that Mrs. Stoll had been harmed or injured during the period of captivity, yet she was *alive and cured*, as distinguished from *dead or permanently injured*, at the time of the trial of this petitioner and the imposition of sentence upon him. Applying that state of facts to the instant case, and applying the ruling of the district court in the Parker case to that set of facts and applying the intention of Congress as related in that opinion, undoubtedly the death sentence imposed upon petitioner was wholly unwarranted and illegal.

The Circuit Court of Appeals' opinion in the Federal Reporter which interprets the lower court's opinion as meaning that the physical condition of the victim at the time of release governs, is nevertheless in direct conflict with the lower court's opinion with which it purports to agree, because the lower court ruled that the physical condition at the time of imposition of sentence is determinative of whether the death penalty may, or may not be, recommended and inflicted.

The result of the inconsistency in the two opinions is that this most important and vital question is left in a very much muddled and unsolved state, and it behooves this Court to straighten out the question before this petitioner is made to be the unwilling sacrifice of a jumbled-up and



uncertain piece of legislation. Petitioner most vigorously insists that Congress intended that he should not be put to death when the facts undeniably show that the alleged victim of the kidnaping alleged to have been committed by him was, at the time of the trial and imposition of sentence, alive, cured and in a perfectly sound physical condition. This Court should relish an opportunity to save the life of petitioner, under the circumstances herein presented and not stand idly by and suffer petitioner's life to be illegally taken. That is a province which this Court should readily, and with all willingness, exercise. The Court is earnestly implored to take this case and give this petitioner at least a CHANCE to show that he has a right to continue living and that the death sentence was illegally imposed upon him. The facts of this case demand that he should be given such opportunity.

**POINT No. 2. Misconduct of the Prosecuting Attorney
Prejudicial.**

On pages 45 to 54 of petitioner's petition and brief it is asserted that the Court erred in not holding that the misconduct of the Prosecuting Attorney was prejudicial. Since then the Court of Appeals of Kentucky, on October 17, 1944, in the case of *Edwards v. Commonwealth of Kentucky*, Ky. ; 182 S. W. 2d 948, has rendered an opinion and reversed a case *solely* on the ground of improper argument to the jury by the prosecuting attorney.

Edwards and one Harvey, were charged with murdering a man in Jefferson County, Kentucky. By way of a little history of the case and of the parties, Edwards was in the Jefferson County, Kentucky, jail, and in the same cell block, with this petitioner. Both he and petitioner had

been so unfortunate as to have had imposed upon them the death sentence, and both were in jail at the same time pending their respective appeals. The improper argument to the jury in the Edwards case was held sufficient to justify a reversal. The improper argument in the case of petitioner, much more flagrant than in the Edwards case, should be sufficient to warrant this Court taking this case by granting this petitioner the writ so earnestly sought. The Kentucky Court had this to say:

“But one statement in the argument for the Commonwealth was so palpably unjustified by the evidence, and of such a character, as to have rendered it highly prejudicial to the substantial rights of appellant, *considering the fact the death sentence was imposed*. Harvey, who was Edwards’ accomplice, did not testify, and no statement by him was introduced in evidence But the Commonwealth’s Attorney knew that Harvey had made a confession, and knew that the confession related that he (Harvey) was the one who struck the blow and tied the knot that caused the death of Mr. Heitlauf. . . .

“With these facts and precepts in mind, we will consider the statement made by the Assistant Commonwealth’s Attorney, which was:

‘It makes no difference in this case who did the killing. I don’t know. He (meaning Edwards) says he didn’t do it. Harvey says he didn’t do it.’

“Since Harvey did not testify, and no statement of his was presented in evidence, any reference to a statement made by him would have been improper, even if true. How much more reprehensible, then, was counsel’s conduct in falsely quoting to the prejudice of the accused. (Then follows a reference and quotation to the Berger case, 55 S. Ct. 629.)

“Of course, the attorney representing the Commonwealth is related to the Commonwealth in the same

degree that the United States Attorney is related to the Federal Government * * *.

"It especially is incumbent upon the attorney representing the Commonwealth to fully represent the evidence in its true light; because any statement uttered by him in a criminal case is more or less strengthened by his official position, since all men know it is his duty not only to endeavor to convict the guilty, but likewise to effect the acquittal of the innocent. * * * It is true that no objection at the time was made to the statement; but, where the defendant's life is at stake, technical rules of procedure must give way to the more lofty aim that justice may be done. As said by the Supreme Court, in *Brown v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682:

'The duty of maintaining constitutional rights of a person on trial for his life rises above mere rules of procedure, and wherever the court is clearly satisfied that such violations exist, it will refuse to sanction such violations and will apply the corrective.'

"It is far more important to society and constitutional government that the accused be accorded a fair and impartial trial than that he be required to forfeit his life in expiation of his crime, no matter how guilty the facts fairly adduced might have proven him to have been."

"For the reasons recited above, although no objection was made to the statement complained of, it was so highly prejudicial to the rights of the accused, considering the penalty involved, that this Court will take notice of the error and direct a reversal of the judgment, in order that a fair and impartial trial may be had."

As will be seen from the quoted objectionable portion of the Assistant Commonwealth Attorney's argument, but very, very few words were said which were claimed to have been prejudicially objectionable. In the instant case, on pages 47 and 48 of petitioner's petition for writ and brief

in support thereof, are set forth many statements which the District Attorney made, some of which were not only prejudicial, but which were not even supported by any evidence. Others were highly inflammatory and passionately made. In this case, as in the Edwards case, the death penalty has been imposed. It is far more important that petitioner be afforded a fair trial than that he be required to forfeit his life in expiation of the crime charged against him, no matter how guilty he may have been made to appear. Such statements as were made by the District Attorney had such an effect on the jury as to cause them to recommend the death penalty.

That death penalty will stand and be carried out unless this Court grant his petition and at least afford him an opportunity to be heard and have his case, upon the merits, passed upon. It would be irony of fate, nothing short of tragedy, for Edwards, the cell-block mate of petitioner who had been charged with murder, to be granted a new trial and for this petitioner, who did not take a life nor was he implicated in the taking of a human life, to be made to pay the extreme penalty when the improper argument in petitioner's case was exceedingly much more flagrant and passionate than in the Kentucky case of Edwards. This Court is earnestly implored to give to this case the earnest and serious consideration it so rightfully deserves, and to withdraw the order heretofore entered denying the writ; to grant to petitioner the relief prayed for in his petition for writ of certiorari, heretofore filed.

Respectfully submitted,

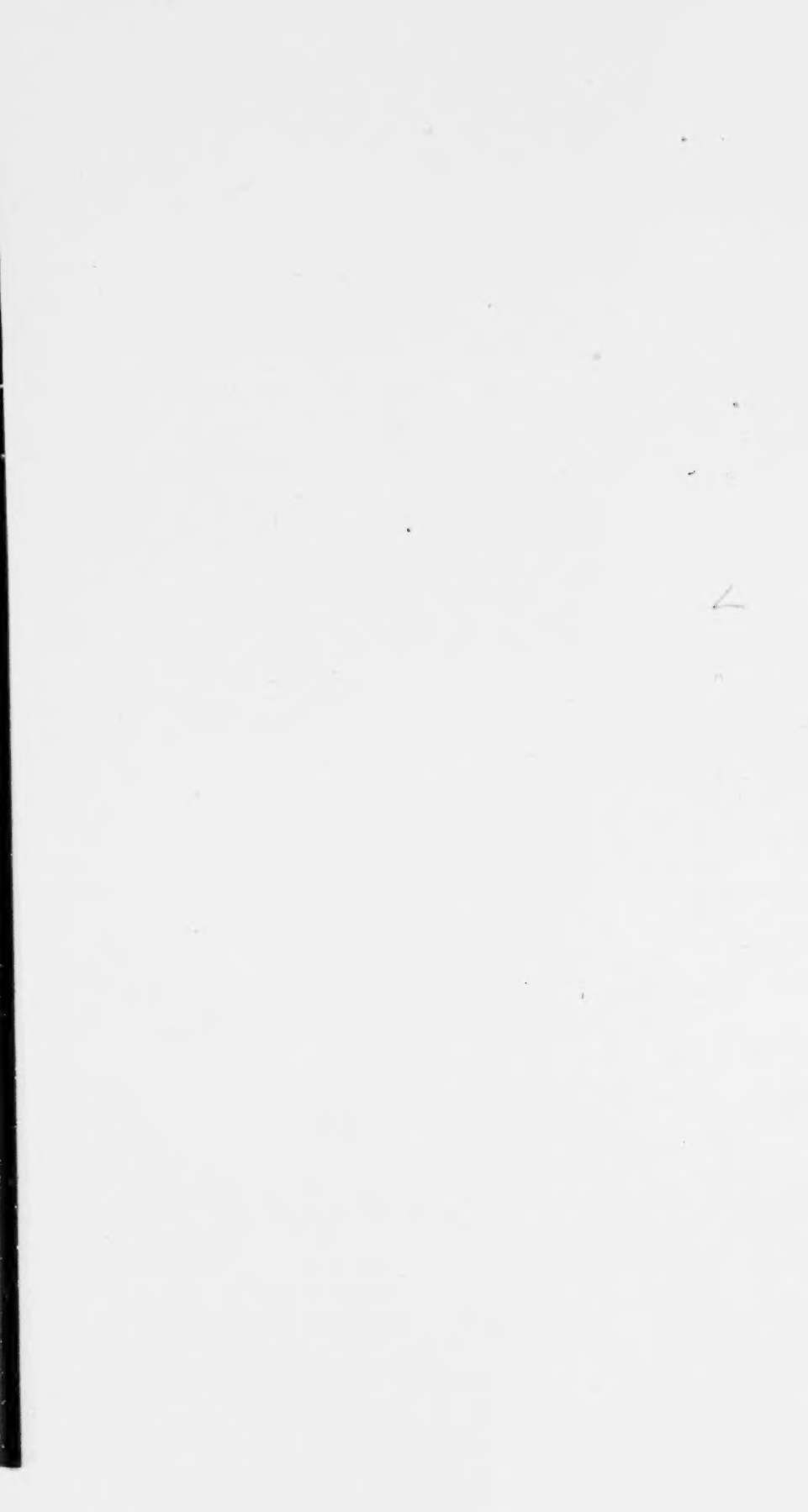
THOMAS HENRY ROBINSON, JR., *Pro Se,*
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.

Petitioner hereby certifies that in his judgment the foregoing petition for rehearing is well founded and is not interposed for delay.

THOMAS HENRY ROBINSON, JR., *Pro Se,*
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Of Counsel.



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No. 514.

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FILED

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CHARLES ELLIOTT DROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1944.

THOMAS HENRY ROBINSON, JR., - Petitioner,

versus

UNITED STATES OF AMERICA, - - Respondent.

PETITION FOR REHEARING ON AFFIRMANCE OF CONVICTION AND JUDGMENT.

THOMAS HENRY ROBINSON, JR., *Pro Se,*
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Counsel for Petitioner.

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IN THE
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THOMAS HENRY ROBINSON, JR., - - *Petitioner,*

v.

UNITED STATES OF AMERICA, - - *Respondent.*

**PETITION FOR REHEARING ON AFFIRMANCE OF
CONVICTION AND JUDGMENT.**

*To the Chief Justice and Associate Justices of the
Supreme Court of the United States:*

STATEMENT.

Although this Court, on January 15, 1945, granted certiorari limited to two questions, one of which was: "Whether the death penalty was intended to be inflicted regardless of the time when inflicted or the degree of injury inflicted," yet the majority opinion of March 5, 1945, affirming, does not expressly decide whether injuries inflicted by the kidnaper antecedent to the denounced act of *transportation of an already kidnaped person* are to be considered in determining whether or not the death penalty may be imposed.

POINT No. 1. Judicial Enlargement of a Criminal Act by Interpretation Is at War With the Fundamental Principle That Crimes Must Be Defined With Appropriate Definiteness. And There Are No Constructive Offenses.

The Act in question denounces as a crime simply the **TRANSPORTATION IN INTERSTATE COMMERCE** of a person who has already been kidnaped. It does not denounce **KIDNAPING**, a State offense. Kidnaping is an offense under the laws of Kentucky, punishable by confinement in the penitentiary for life, or by death. Section 435.140 of Kentucky Revised Statutes, provides as follows:

“(1) Any person who, forcibly or otherwise, holds another against his will to unlawfully obtain a ransom for his release, or who aids or abets any person thus offending, shall be punished by confinement in the penitentiary for life, or by death.”

Congress nowhere in the Act defined the term “kidnaped,” nor did it even slightly intimate that antecedent injuries inflicted during the commission of the State offense of kidnaping were to be reckoned with or considered in determining whether the death penalty should be imposed. *The majority opinion of this Court has left unanswered that question—a question moreover upon which this Court granted certiorari.*

A reference to the Act in question readily reveals that Congress intended to punish “Whoever shall knowingly **TRANSPORT** in * * * interstate com-

merce, any person who shall have been unlawfully
 * * * kidnaped * * * and held for ransom
 * * *,” thereby pitching the whole offense upon the
 act of **TRANSPORTATION** in interstate commerce.

From the legislative history comes the revealing fact that by Senate Report No. 534, Mr. Stephens, from the Committee on the Judiciary, submitted the following:

“In addition, this bill adds a proviso to the Lindbergh Act to the effect that in the absence of the return of the person kidnaped, and in the absence of the apprehension of the kidnaper during a period of 3 days (later extended to 7 days), the presumption arises that such person has been **TRANSPORTED** in interstate or foreign commerce, but such presumption is not conclusive.

“I believe that this is a sound amendment which will clear up border-line cases, justifying Federal investigation in most of such cases and assuring the validity of Federal prosecution in numerous instances in which such prosecution would be questionable under the present form of this act.”

That quotation convincingly establishes that Congress was concerned chiefly and *only* with the interstate transportation of one who had been already kidnaped, and for that reason a three-day absence (later extended to seven days) of the person kidnaped was to create a presumption of **TRANSPORTATION** in interstate commerce. It plainly, and just as convincingly, demonstrated that Congress was not in the least concerned

with kidnapings, state offenses, or with the degree or amount of force wielded by the kidnaper in subduing his victim. In this instance, the Kentucky laws, and in other instances other State laws, are adequate in affording protection to its citizens and punishment for the guilty. If petitioner, in the case at bar, had struck his victim over the head with an iron pipe, or otherwise injured her, in the act of kidnaping, and had held the victim captive in Kentucky for, shall we say, thirty days, the kidnaping and beating and injuring would be strictly a State offense, even though there might arise a rebuttable presumption, after the lapse of seven days, that there had been an interstate transportation of an already kidnaped person. It could not be successfully maintained under those circumstances that the Federal offense of transportation had been violated.

Also, if after the lapse of thirty days or any number of days the kidnaper should decide to move his victim from Kentucky to another State, and did so, then, for the first time, would the Federal law come into play, and the kidnaper would then become amenable to the denounced act of transporting in interstate commerce an already kidnaped person. It would necessarily follow, and this example is cited to show that no matter what degree of force he may have exerted in subduing the victim, violence forms no part of the denounced act of transportation of one already kidnaped, and this Court, in the majority opinion, failed to decide that question, although it granted certiorari on that point.

Furthermore, judicial enlargement of a criminal act by interpretation is at war with the fundamental principle that crimes must be defined with appropriate definiteness. There are no constructive offenses, and before one can be punished, it must be shown that his case is plainly within the statute. *Fasulo v. United States*, 272 U. S. 620; *United States v. Resnick*, 299 U. S. 207; *United States v. Chase*, 135 U. S. 255.

There are no words in the language of the Lindbergh Act, nor in the legislative history of the Act, which even intimate that prior acts resorted to in subduing a victim who may be later transported in interstate commerce are to be included within the purview of the statute. The statute is simply an interstate transportation act. If there be any doubt as to that, all that is necessary is to consult Section 408b, Title 18, United States Code, which defines the term "interstate or foreign commerce." The Act is silent upon antecedently inflicted injuries, all of which gives rise to the suggestion that Congress did not intend to include any acts of violence which the kidnaper resorts to before the transportation from one State to another is actually engaged in. The Act may not be stretched by judicial decision to include any acts not plainly within its purview.

This Court, in the case of *Pierce v. United States*, 314 United States, 237, in an opinion by Mr. Justice Reed, a case incidentally from the Sixth Circuit, had for consideration the question of whether the statute making it an offense to falsely impersonate an officer or employee of the United States, included within its

scope false impersonation of officers of the Tennessee Valley Authority, a Government corporation. The Act as originally passed did not include officers of Government-owned corporations, but by a later amendment did include them. The opinion dealt with the situation existing before the amendment. This was said in that opinion :

“These legislative extensions of the scope of the act were in accord with the growing importance of the administrative corporation, but a comparable judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness. *Cf.* *Lanzetta v. New Jersey*, 306 U. S. 451, 59 S. Ct. 618, 83 L. Ed. 888, and cases cited. While the act should be interpreted ‘so as * * * to give full effect to its plain terms,’ *Lamar v. United States*, 241 U. S. 103, 112, 36 S. Ct. 535, 538, 60 L. Ed. 912; *United States v. Barnow*, 239 U. S. 74, 36 S. Ct. 19, 60 L. Ed. 155, we should not depart from its words and context.”

Furthermore, there are no common-law offenses against the United States, and, in construing Federal statutes, courts must generally assume, in the absence of plain indication to the contrary, that Congress did not make the application of a Federal Act dependent upon State law. In the case of *Jerome v. United States*, 318 U. S. 101, 63 S. Ct. 483, in an opinion by Mr. Justice Douglas, Jerome was convicted of violating 12 U. S. C. A., Section 588-b, by entering a national bank in Vermont with intent to utter a forged promissory note,

the utterance of a forged promissory note being a felony under the laws of Vermont, but not under any Federal statute.

That case is comparable because kidnaping is a felony under Kentucky law, but is not under any Federal statute, and the Lindbergh Act does not incorporate the Kentucky offense of kidnaping.

The opinion had this to say:

"We disagree with the Circuit Court of Appeals. We do not think that 'felony' as used in section 2(a) incorporates state law. * * * *But we must generally assume, in the absence of a plain indication to the contrary, that Congress when it enacts a statute is not making the application of the federal act dependent on state law.* * * *

"Since there is no common law offense against the United States (citing cases), the administration of criminal justice under our federal system has rested with the states, except as criminal offenses have been explicitly prescribed by Congress. We should be mindful of that tradition in determining the scope of federal statutes defining offenses which duplicate or build upon state law. In that connection it should be noted that the double jeopardy provision of the Fifth Amendment does not stand as a bar to federal prosecution though a state conviction based on the same acts has already been obtained (citing cases). That consideration gives additional weight to the view that where Congress is creating offenses which duplicate or build upon state law, courts should be reluctant to expand the defined offenses beyond the clear requirements of the terms of the statute.

"There is no plain indication in the legislative history of section 2(a) that Congress used 'felony' in a sense sufficiently broad to include state offenses. * * *

"In the second place, Congress defined in section 2(a) robbery, burglary, and larceny but not felony. We can hardly believe that having defined three federal offenses, it went on in the same section to import by implication a miscellaneous group of state crimes as the definition of the fourth federal offense. In this connection it should be noted that when Congress has desired to incorporate state laws in other federal penal statutes, it has done so by *specific* reference or adoption. The omission of any such provision in this Act is a strong indication that it had no such purpose here."

The State offense of "kidnaping" is not defined in the Lindbergh Act. The thing which was aimed at, "interstate or foreign commerce," is specifically defined. In failing to define "kidnaping," it must be assumed that Congress did not intend the State offense of "kidnaping" to form any part of the act of transportation in interstate commerce of a person who had already been kidnaped, because, if it had, it would have done so by specific reference or adoption, as pointed out by the Jerome opinion. Likewise, it must be assumed that Congress did not intend any acts of assault incidental to the State offense of kidnaping to form any part of the transportation in interstate commerce. And, as further pointed out in the Jerome case, since there are no common-law offenses against the

United States, the administration of criminal justice under the Federal system has rested with the States, except as criminal offenses have been *explicitly* prescribed by Congress. Nor should this Court be unmindful of the principle that criminal statutes are always *strictly* construed; that there are no constructive offenses and before one can be punished, it must be shown his case is *plainly* within the statute.

Lastly, where Congress is creating offenses which duplicate or build upon State law, courts should be reluctant to expand the defined offenses beyond the clear requirements of the terms of the statute. This Court should be reluctant to expand the offense denounced by the Lindbergh Act to include any Act which duplicates or builds upon the Kentucky State law denouncing kidnaping. For that reason it should not include any act of violence incidental to the State offense of kidnaping, which would necessarily, and should, exclude the striking of the victim with an iron pipe. As the striking by this petitioner of his alleged victim with an iron pipe was an impelling influence upon this Court in its decision to affirm, and as that factor should be eliminated in determining whether or not the death penalty should have been imposed, this Court is behooved and beseeched to withdraw its opinion affirming the judgment and conviction and to render one reversing this case.

**POINT No. 2. Court's Instruction on Whether to Impose
Death Penalty Inconsistent and Unlawful.**

The Court, by its instructions (1500-1518, T. R.), permitted the jury to determine whether or not to recommend the imposition of the death penalty. The opinion of this Court, page 1, states that this Court granted certiorari limited to the sole question of the Court's statutory authority to impose the death sentence. Therefore, the Court's instruction on that point would come within the purview of that question. The pertinent part of that instruction appears on page 1517 of the Record, as follows:

“Keep in mind, therefore, that if your verdict should be one of guilty, that you have the further duty of deciding whether or not you shall recommend to the court punishment by death. Whether or not such a recommendation should be made calls for an exercise by the jury of discretion and an evaluation of mitigating circumstances. It would be your duty to determine whether the defendant, in view of all the circumstances surrounding the commission of the crime, merited the death penalty. In exercising this privilege whether or not such a recommendation should be made, **YOU ARE NOT BOUND BY RULES OF LAW**, but will make your own appraisal of the character of the conduct of the defendant as evidenced by his acts which were related to the commission of the crime with which he is charged.”

That charge to the jury, which told them that they were not bound by any rules of law in determining

whether they would recommend that the death penalty be imposed, was not only inconsistent with other portions of the instructions, but entirely nullified all other instructions favorable to petitioner.

It simply turned the jury loose to recommend the death penalty according to the jury's whim and fancy without furnishing any guide by which it might or might not recommend such a penalty. Instructions of the Court are the law by which juries are guided. To charge a jury that they are not bound by any rules of law upon the most serious aspect of the case, the forfeiture of life, should not be countenanced. Petitioner is not unmindful of the rule that no complaint will usually be heard when no exceptions are taken to the Court's instructions. Petitioner is likewise mindful of the rule in *United States v. Atkins*, 297 U. S. 157; and in *United States v. Dressler*, 112 F. (2d) 972, 976, that appellate courts may, of their own motion, notice errors to which no exception has been taken, if they are obvious or seriously affect the fairness and integrity of judicial proceedings. This case is one calling for the application of that rule.

POINT No. 3. Minority Opinion Correct.

Mr. Justice Rutledge has written a very strong, persuasive dissenting opinion, in which Mr. Justice Murphy has joined. That dissenting opinion points out vividly, and with logic, the inconsistency of the majority opinion. Particularly, does it show that Congress, by not making clear its intention, has placed upon the Courts the burden of "guessing" what it

meant. This case, in which petitioner's life is to be forfeited unless this Court intervenes by recalling its former opinion and rendering one reversing, should not be grounded upon the uncertainty of this Court's guess as to what Congress intended. The majority opinion states that it is not clear what was intended, and yet the Court has proceeded to guess away this petitioner's life. Such important things as the forfeiture of petitioner's life should not be left to rest upon such an uncertainty.

CONCLUSION.

This Court is earnestly implored to give to this case the earnest and serious consideration it so rightfully deserves, and to withdraw its opinion affirming; and to render one reversing this case.

Respectfully submitted,

THOMAS HENRY ROBINSON, JR., PRO SE,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Counsel for Petitioner.

Petitioner hereby certifies that in his judgment the foregoing petition for rehearing is well founded and is not interposed for delay.

THOMAS HENRY ROBINSON, JR., PRO SE,
Petitioner.

ROBERT E. HOGAN,
Louisville, Ky.,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

No. 514.—OCTOBER TERM, 1944.

Thomas Henry Robinson, Jr., Petitioner, vs. United States of America.	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.
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[March 5, 1945.]

Mr. Justice BLACK delivered the opinion of the Court.

The petitioner was indicted and convicted in a District Court for violating the Federal Kidnapping Act, 47 Stat. 326, 48 Stat. 781, by transporting in interstate commerce a person whom he had kidnapped and held for a reward. The jury recommended and the court imposed the death penalty. The Circuit Court of Appeals affirmed, 144 F. 2d 392. We granted certiorari limited to the sole question of the court's statutory authority to impose the death sentence.

The Act authorizes the death sentence when recommended by a jury "provided that the death sentence shall not be imposed by the court if prior to its imposition, the kidnapped person has been liberated unharmed." The indictment charged, and there was evidence before the jury, to the effect that the kidnapping victim yielded to capture only after the petitioner had twice violently struck her on the head with an iron bar; that while held in custody her lips were abraded and made swollen by repeated applications of tape on her mouth, and that wounds resulting from these assaults were not healed when she was liberated after six days captivity. No evidence was introduced, nor did the indictment charge, that the injuries inflicted were permanent, or that the victim still suffered from them when the petitioner was sentenced, nine years after commission of the offense.¹ The trial court charged the jury that in determining whether the victim had been "liberated unharmed" they were limited to a consideration of her condition at the time she was liberated, and that they were not authorized to recommend the death penalty if at the time of her liberation she had recovered from her injuries. Petitioner took no exception to the charge, and asked no other. Its correctness is before us only to the extent that we are asked to say that

¹ Petitioner pleaded guilty to the offense in 1936. In August, 1943, a district court held his plea of guilty invalid on the ground that he had been denied counsel. This appeal is from a trial which took place in October, 1943. See *Robinson v. Johnston*, 118 F. 2d 998; 316 U. S. 649; 130 F. 2d 202; 50 F. Supp. 774.

the injuries inflicted must be permanent or they must be in existence at the time of sentence in order to authorize the infliction of the death sentence.

The scant legislative history of the Act is of little assistance to us in interpreting this proviso. Two possible reasons suggest themselves, however, as to the motivation of Congress in making the severity of a kidnapper's punishment depend upon whether his victim has been injured. The first reason is the old belief that the severity of the injury should measure the rigor of the punishment. If this be the reasoning implicit in the statute, it would appear that Congress intended that for a kidnapper to obtain the benefit of the proviso he must both liberate and refrain from injuring his victim. Congress may equally have intended this provision as a deterrent, on the theory that kidnappers would be less likely to inflict violence upon their victims if they knew that such abstention would save them from the death penalty. This assumption finds some slight support in the legislative history,² is not contested by the government, has been accepted in one case³ and is the chief prop for the interpretation which the petitioner urges. He argues upon this assumption that the wider the scope of the exemption from the death penalty, the greater the inducement for the kidnapper to release the victim. To magnify the inducement, we are asked to interpret the proviso as granting immunity from the death sentence to any kidnapper who does not permanently injure his victim. We cannot expand the meaning of the statute on such a hypothesis and we turn to its language.

We accept the word "unharmed" appearing in the proviso as meaning uninjured. Neither the word "permanent" nor any other word susceptible of that meaning was used by Congress. The quality of the injury to which Congress referred is not defined. It may be possible that some types of injury would be of such trifling nature as to be excluded from the category of injuries which Congress had in mind. We need indulge in no speculation in regard

² When the original kidnapping bill was passed by the Senate it did not provide for a death penalty. The House Committee on the Judiciary reported it to the floor with an amendment which authorized a death penalty unless the jury recommended mercy. 75 Cong. Rec., Part 12, 13294. Considerable opposition to the death sentence developed in the ensuing debate, *Ib.* pp. 13282-13304. Some of the opposition rested on the argument that the death penalty would cause kidnappers to kill their victims rather than release them because of fear that a liberated victim could send a kidnapper to the electric chair. *Ib.* pp. 13285, 13304. The bill as passed did not authorize the death penalty. 47 Stat. 326. Two years later an amendment was passed containing the present proviso. 48 Stat. 781. Its legislative history throws no additional light on its purpose.

³ *United States v. Parker*, 19 F. Supp. 450, 103 F. 2d 857.

to such a category. The injuries inflicted upon this victim were of such degree that they can not be read out of the Act's scope without contracting it to the point where almost all injuries would be excluded. We find no justification whatever for grafting the word permanent onto the language which Congress adopted.

Nor can we construe the proviso as precluding the death sentence where the kidnapped person's injuries have been healed at the time sentence is imposed. It is not to be assumed that Congress intended a matter of such grave consequence to defendants and the public to turn on the fortuitous circumstance of the length of time that a case is pending in the courts. Far too many contingencies are involved, for example, the time it takes to apprehend a criminal, the condition of the trial docket, and the uncertainties of appeals. We would long hesitate before interpreting the Act so as to make the severity of sentence turn upon the date sentence is ultimately imposed, even if the language of the Act more readily lent itself to such a construction than this one does. At the very least, the proviso's language must mean that the kidnapped person shall not be suffering from injuries when liberated; the kidnapped person here was still suffering from her injuries when liberated.

Nevertheless it is argued that the death penalty proviso should be held invalid on the ground that there is uncertainty as to the precise meaning and scope of the word "unharmed" and the phrase "liberated unharmed." In most English words and phrases there lurk uncertainties. The language Congress used in this Act presents no exception to this general truth. One thing about this Act is not uncertain, and that is the clear purpose of Congress to authorize juries to recommend and judges to inflict the death penalty, under certain circumstances, for kidnappers who harmed their victims. And we cannot doubt that a kidnapper who violently struck the head of his victim with an iron bar, as evidence showed that this petitioner did, comes within the group Congress had in mind. This purpose to authorize a death penalty is clear even though Congress did not unmistakably mark some boundary between a pin prick and a permanently mutilated body. It is for Congress and not for us to decide whether it is wise public policy to inflict the death penalty at all. We do not know what provision of law, Constitutional or statutory, gives us power wholly to nullify the clearly expressed purpose of Congress to authorize the death penalty because of a doubt as to the precise congress-

sional purpose in regard to hypothetical cases that may never arise.

The trial court committed no error of which this petitioner can complain.

Affirmed.

Mr. Justice RUTLEDGE, dissenting.

The penalty of death should not be imposed upon conditions defined so uncertainly that their identity cannot be ascertained or is left open to grave doubt. If words ever need to be clear, they do when they perform this function. I do not know what Congress meant when it commanded that "the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed." 48 Stat. 781.

The words have the sound of certainty which simple, everyday language gives forth. The certainty is only illusion. What does "liberated unharmed" mean? The statute does not tell us. Nor does the legislative history.¹ Neither does the Court's opinion. It rather demonstrates the statute's ambiguity. It does not say what Congress meant. It says only that Congress meant one of two things, and either would cover this case.² A third possible construction, put forward by petitioner, is rejected. The statute, it is held, does not mean that the death penalty can be imposed only when the injuries inflicted are permanent or, presumably, only when they remain at the time of sentence, though not permanent. The Court does not say what "liberated" means. Nor does it define "unharmed," except that it excludes the injury inflicted in this case.

What act is pointed to by "liberated"? Does it refer only to release by the kidnapper or does it include a case of rescue overcoming his will and purpose? Does it cover his abandonment of the victim in flight, leaving him perhaps gagged and bound in some lonely spot or cell, not free but no longer in the kidnapper's power? Or must he, before the pressures become too great, change his mind, exercise discretion and set the victim free before he is forced to do so?

¹ The Government's brief candidly states: "The interpretation of the proviso here involved must be determined from the face of the statute itself since neither the legislative history nor prior state legislation offers guidance." No hearings were held on the 1934 amendments, providing for the death penalty. They were accepted upon conference reports by both houses without debate. H. Rep. No. 1595, 73d Cong., 2d Sess.; 78 Cong. Rec. 8775, 8856-8857. Neither H. Rep. No. 1595 nor H. Rep. No. 1457, 73d Cong., 2d Sess., gives light on the meaning of the limitation.

² Cf. note 3.

Similarly, what is "unharméd"? A scratch, a cut, abrasions left by removal of tape or rope, bruises, nervous shock, disturbance of digestion, all of a kind which heals or passes before "liberation" occurs? Few kidnappings take place without harm of some kind to the victim. They may be executed by force or by mere threats. One produces traumatic injury, from minor abrasion to death, the other nervous or mental shock of momentary or lifetime duration. How much injury, and what kind, did Congress have in mind?

Is the death penalty to be imposed for the identical cut or abrasion, whether minor or serious, inflicted during the act of taking the victim, merely because in one case the kidnapper releases or abandons him quickly, perhaps because forced to do so, but forbidden in another because he holds the victim until the injury heals? Is reward thus to be given for prolonging the agony?

Is the jury to range throughout the category of human ills, not only to find that injury has been inflicted but to evaluate whether those ills are "injuries" within the meaning of the statute? Or is this a question of law to be determined by the judge upon some vague criterion of "trifling nature" such as the opinion appears to suggest? Whether Congress meant all injuries, slight, substantial, serious or permanent, or only some of these, the statute does not say and the legislative history gives no guide. The judge, or the jury, or both together not only must apply, they must determine and write the law in this respect, until at any rate this Court, equally without legislative guidance, tells them what Congress had in mind.

There are still other uncertainties. Was it the intent (1) that the kidnapper must both liberate and refrain from injuring his victim or (2) merely that he must not inflict harm, however the liberation may occur? We are not told what was Congress' purpose, whether to measure the rigor of the punishment by the severity of the injury or to induce kidnappers not to use violence at all, deterring them by the threat of death for its use in whatever degree.³ Neither the legislative history nor the opinion gives light on this question. If Congress wished to induce gentle kidnappings, injuries inflicted in the course of the act of kidnapping are covered, provided they remain at the time of "liberation."

³ At one point the opinion declines to express a choice between these possible alternatives. At another it states "the clear purpose of Congress" was to authorize "the death penalty under certain circumstances for kidnappers who harmed their victims." Is this to be taken as deciding that "liberated unharméd" means "liberated not having been harmed at all"? If so, the Court's view differs from the Government's, which is that the

They would not be included, if healed before it, however grave when inflicted or however distant liberation from infliction. What if the kidnapper, knowing that time is crucial, keeps his victim until the injuries are healed? Was it Congress' purpose to induce longer detention, the more serious the injury inflicted during the original act? What if it is inflicted afterward, but during the course of the detention? Once injury has taken place, the inducement held out by the statute necessarily is either to hold the victim until cure is effected or to do away with him so that evidence, both of the injury and of the kidnapping, is destroyed.⁴ The more serious the injury the stronger these inducements. It is only upon such considerations, affecting the victim's safety, that Congress' qualification of the power to impose the sentence of death can be accounted for.⁵

words mean "unharmd at the time of liberation." Cf. note 5. Moreover, the opinion, if so effective, invites for the victim the very danger Congress sought to avoid by placing the limitation upon the power to impose the sentence.

⁴ These considerations for the safety of the victim, recently dramatized by the Lindbergh case, were influential in bringing about the omission from the original Kidnapping Act of 1932 (47 Stat. 326) of any provision for the death penalty. Representative Celler stated them thus:

"If you insist upon the death penalty, I wager that you will inflict a penalty on the victim who is kidnaped. The victim may be murdered or slain because the prisoner [sic] has nothing to gain by the victim being kept alive, because he forfeits his own life, in any event. . . . The person kidnaped is the witness who, even when rescued, can always point the accusing finger at the guilty. Doing away with the victim would save the life of the guilty." 75 Cong. Rec. 13285. See 75 Cong. Rec. 13282-13304 for other statements opposing the extreme penalty.

From the viewpoint of possible effectiveness in securing the victim's safety, the qualification imposed by the 1934 Act would seem to be directed more toward the kinds of danger Congress had in mind during the 1932 debate than toward preventing all use of force in the kidnapping act itself. Cf. note 5 and *United States v. Parker*, 19 F. Supp. 450, affirmed, 103 F. 2d 857, cert. denied, 307 U. S. 642.

⁵ The Government has urged adoption of the construction which takes account of these considerations. The brief states:

"The words 'liberated unharmd' . . . are subject to two interpretations. They may be construed to mean liberated without having been harmed at any time in the course of detention, or . . . liberated in an unharmd condition at the time of liberation. The first construction attributes to Congress the intention to cause kidnapers not to harm the victim but without tending to secure liberation of a victim who has been harmed. The second construction offers the kidnaper an inducement, in addition to the inducement not to harm, to care for and to cure an injured victim so that he may be unharmd when liberated. The second construction encourages kidnapers not to murder an injured victim, an inducement not present under the first construction. In view of the temptation to kidnapers to murder their victims in order to dispose of witnesses to their crime, and in view of the interest disclosed in Congress to avoid a death penalty provision which would encourage this result, the Government submits that the second construction more properly reflects the intention of Congress and should be adopted." (Emphasis added.)

Finally, was Congress attempting to offer the maximum inducement to liberation? If this was the purpose, petitioner's construction, rejected by the Court, has more force than the other possible ones among which it declines to choose. For in that event the kidnapper would have inducement, once injury is inflicted, though serious, to surrender the victim in the hope that care after surrender might bring about cure before imposition of sentence. If the single and vague word "unharmd" is construed to mean absence of permanent injury or grave injury, though not permanent, he would have the hope, the inducement that surrender might give escape from the maximum sentence. Contrary to the Court's view that this interpretation is impossible, it goes directly to the unanswered questions, how much and what kinds of injury Congress had in mind; and to adopt it would accord with the rule that criminal statutes should be strictly construed. Moreover it would apply in this case, since there is no evidence of permanent injury or even that the injuries inflicted were critical at the time of the victim's release. She testified at the trial.

It is true this construction would make imposition of that penalty depend upon fortuitous circumstances, the length of time between release and sentence, as well as the chances of the victim to recover and their successful working out in that period. But any other construction either makes it depend upon circumstances equally fortuitous or has the inevitable effect, in many cases, of holding out inducement to the kidnapper to inflict the ultimate harm rather than to refrain from inflicting harm at all. Petitioner's construction more than any other takes into account the victim's safe surrender. Once the victim is hurt, the kidnapper's problem of what to do with him becomes inescapable and the provision for the extreme penalty can work only to defeat or defer liberation. Was this what Congress intended, knowing that few kidnappings can occur in which some substantial harm will not be done?

I doubt that Congress intended these consequences. I do not know from its words what it did intend. The opinion does not enlighten me, except that this case is one of possibly many, vaguely indicated, which may have been in mind. Congress has broad power to prescribe penalties for crime, including death. It may give wide discretion to courts in selecting from a broad range of defined penalties to fit the individual case. Within limits this discretion may include the death penalty.

It is one thing however for Congress to confer the discretion confined by specified and ascertainable limits. It is another thing

for Congress itself to turn the exercise of the conferred discretion upon conditions which cannot be ascertained from its mandate or can be located only with the greatest uncertainty.

Two things are clear. Congress did not intend the death penalty to apply to all convictions under the statute. Nor was its imposition intended to rest absolutely or exclusively either upon the jury's recommendation or in the court's discretion. The purpose obviously was to forbid it in some cases. But these can be determined only by choice among conflicting inferences which set one purpose Congress may have had in mind at war with others equally attributable to it.

This case involves the law's extreme penalty. That penalty should not rest on doubtful command or vague and uncertain conditions. The words used here, for its imposition, are too general and unprecise, the purposes Congress had in using them too obscure and contradictory, the consequences of applying them are too capricious, whether for the victim or for the kidnapper, to permit their giving foundation for exercise of the power of life and death over the citizen, though he be convicted criminal. Other penalties might be rectified with time, if wrong. This one cannot be.

Moreover, the Court's refusal to resolve the statute's admitted ambiguity leaves hanging over the heads of future victims the danger which flows from "a death penalty provision which would encourage" the same irreparable fate for them. When that fate falls it will not be "hypothetical" and there will be nothing either we or Congress can do to revoke it.

I think the statute turns the power to impose the death penalty upon facts so vaguely defined that only judicial legislation can remedy the defect. This is not the kind of thing courts should be left to work out case by case through the "gradual process of inclusion and exclusion." This business rather belongs to Congress, not to the courts. As the Court's opinion states, though I think in contradiction of its judgment, "It is for Congress and not for us to decide whether it is wise public policy to inflict the death penalty at all." Congress' mandate in such matters must be clear; otherwise we, not Congress, decide. In this one it is beyond understanding.

I would vacate the judgment and remand the cause for the petitioner to be resentenced.

Mr. Justice MURPHY joins in this opinion.

